

Panaji, 28th October, 2010 (Kartika 6, 1932)

SERIES II No. 31

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 30 dated 21-10-2010 as follows:-

- 1) *Extraordinary dated 21-10-2010 from pages 719 to 720 regarding Corrigendum from Department of Elections (Goa State Election Commission).*
- 2) *Extraordinary (No. 2) dated 21-10-2010 from pages 721 to 722 regarding Notificatio from Department of Elections (Office of the Chief Electoral Officer).*

GOVERNMENT OF GOA

Department of Co-operation

Office of the Asstt. Registrar of Co-operative Societies

Order

No. 18-25-90/ARSZ/CONS/2070

- Read: (1) Order No. 18-25-90/ARSZ/CONS/981 dated 7th June, 2010, terminating the Liquidation proceeding of the Gonvol Consumer Co-op. Society Ltd., Gonvol, Xeldem-Quepem-Goa.
- (2) Minutes of the final General Body Meeting of the Gonvol Consumer Co-op. Society Ltd., Gonvol, Xeldem-Quepem-Goa.
- (3) This Office letter requesting the Liquidator of transfer surplus fund account to the Registrar of Co-op. Societies surplus fund account No. 67, maintained with the Goa State Co-op. Bank Ltd., Panaji-Goa.

In exercise of the powers vested in me under Section 19 of the Goa Co-op. Societies Act, 2001. I, P. M. Naik, Asstt. Registrar of Co-operative Societies, South Zone, Margao, Goa, and in furtherance to above referred Order dated 7th June, 2010, hereby cancel the registration of the Gonvol Consumer Co-op. Society Ltd., Gonvol,

Xeldem-Quepem-Goa, the said society shall be deemed to be dissolved, and therefore cease to exist as a Corporate body.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 20th September, 2010.

Order

No. 7-52-80/ARSZ/Service/2086

- Read: (1) Order No. 7-52-80/ARSZ/Service/733 dated 10th May, 2010, terminating the Liquidation proceeding of the St. Cruz Service Co-op. Society Ltd., Cavelossim, Salcete-Goa.
- (2) Minutes of the final General Body Meeting of the St. Cruz Service Co-op. Society Ltd., Cavelossim, Salcete-Goa.
- (3) This Office letter dated 12th July, 2010, requesting the Liquidator of transfer surplus fund account to the Registrar of Co-op. Societies surplus fund account No. 67, maintained with the Goa State Co-op. Bank Ltd., Panaji-Goa.

In exercise of the powers vested in me under Section 19 of the Goa Co-op. Societies Act, 2001. I, P. M. Naik, Asstt. Registrar of Co-operative Societies, South Zone, Margao, Goa, and in furtherance to above referred Order dated 10th May, 2010, hereby cancel the registration of the St. Cruz Service Co-op. Society Ltd., Cavelossim, Salcete-Goa, the said society shall be deemed to be dissolved, and therefore cease to exist as a Corporate body.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 22nd September, 2010.

No. 19-52-2005/ARSZ/HSG/2085

Read: 1) Showcause Notice No. 19-52-2005/
/ARSZ/HSG/1626 dated 15th
December, 2005.

2) Final Order No. 19-52-2005/ARSZ/
/HSG/2146 dated 8th February, 2005
taking the society into Liquidation.

3) Letter dated 23-08-10, from the
Liquidator of Bansai Centre Co-op.
Hsg. Society Ltd., Bansai, Cacora,
Curchorem-Goa.

The Bansai Centre Co-op. Housing Society Ltd., Bansai, Cacora, Curchorem, Goa was taken into liquidation vide Order at Sr. No. 3 above, since the Managing Committee members failed to discharge their duties and responsibilities as per the provisions of bye-laws and also showed lack of interest in continuing with the working of the society, as a result of which there was no other alternative, but to wind its affairs and Shri Santosh B. Gadkar, Jr. Auditor/Inspector, Co-op. Societies was appointed as the Liquidator.

However, some of the members approached this office and informed that in the meeting held on 4-7-10 they have decided to revive the society and a last opportunity be given to them in this regards.

The liquidator has also informed this office that the Special General Body Meeting of the members was called on 22-8-10, wherein the members have unanimously resolved to revive the affairs of the society.

Therefore, in the view of the decision taken by the General Body at the Special General Body Meeting held on 22-8-10, I pass the following order:

ORDER

In exercise of the powers vested in me in terms of Section 16 of Goa Co-op. Societies Act, 2001, I, P. M. Naik, Asstt. Registrar of Co-op. Societies, South Zone, Margao-Goa, hereby order reconstitution of "Bansai Centre Co-op. Housing Society Ltd.," Bansai, Cacora, with immediate effect.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 22nd September, 2010.

Notification

No. 5-1277-2010-ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-operative Societies

Act, 2001. "The Jackferns Co-operative Housing Society Limited," Near Dr. Kusha Residence, Borda, Margao-Goa, is registered under code symbol No. HSG-(b)-772/South Goa/2010.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 22nd September, 2010.

Certificate of Registration

"The Jackferns Co-operative Housing Society Limited," Near Dr. Kusha Residence, Borda, Margao-Goa, has been registered on 22-9-2010 and it bears registration code symbol No. HSG-(b)-772/South-Goa/2010 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of the Goa Co-operative Societies Rules, 2003.

Sd/- (P. M. Naik), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 22nd September, 2010.



Goa Legislature Secretariat

Order

No. LA/Admn/2010/2511

Ref.: Order No. LA/Admn/2009/1828 dated 24th September, 2009.

In continuation to the above referred order, the Governor in consultation with 'Board' under Rule 4 (2) of the Goa Legislature Secretariat (Recruitment and Conditions of Service) rules, 1988, is pleased to extend the appointment of Shri Yuvaraj Naik to the post of Joint Secretary, Legislature, Group "A" (Gazetted), in the pay scale of PB—3 Rs. 15,600-39,100+6,600 on ad hoc basis, for further period of one year w.e.f. 25th September, 2010 (F.N.) or until further orders, whichever is earlier.

2. The above appointment is made against the post of Joint Secretary created vide Order No. LA/Admn/2008/483 dated 29th April, 2008.

3. The appointment of Shri Yuvaraj Naik being on an ad hoc basis will not bestow a claim for regular appointment and the services rendered by him on ad hoc basis will not be counted for the purpose of seniority in the grade.

4. The pay of Shri Yuvaraj Naik shall be fixed as per the rules.

5. The expenditure on pay and allowances shall be debited to the Budget Head "2011-Parliament/State/U.T. Legislature; 02-State/U.T. Legislature; 103-Legislature Secretariat; 01-Legislature Secretariat of State; 01-Salaries."

By order and in the name of the Governor of Goa.

N. B. Subhedar, Joint Secretary, Legislature.

Porvorim, 19th October, 2010.

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Department of Labour

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Order

No. 28/36/2010-LAB

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Wallace Pharmaceuticals Private Limited, Curti, Ponda, Goa and its workman, Shri Bablo B. Naik, Sweeper, represented by the Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

- (1) Whether the action of the management of M/s. Wallace Pharmaceuticals Private Limited, Curti, Ponda, Goa, in dismissing from service Shri Bablo B. Naik, Sweeper, with effect from 30-10-2009, is legal and justified to?
- (2) If not, to what relief the Workman is entitled to?

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 20th October, 2010.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 20-09-2010 in reference No. IT/10/90 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 18th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before **B. P. Deshpande**, Presiding Officer)

Ref. No. IT/10/90

Shri Ulhas Palekar,
H. No. 4/2, Betal Temple Road,
Kaule, Ponda, Goa. ... Workman/Party I
V/s

M/s. M. R. F. Ltd.,
Tisk, Usgao,
Ponda, Goa. ... Employer/Party II

Party I/Workman is represented by Adv., H. Shirodkar.

Party II/Employer is represented by Adv., G. K. Sardessai.

AWARD

(Passed on this 20th day of September, 2010)

In exercise of the powers conferred under Section 10(1)(d) of the Industrial Dispute Act, the Government of Goa referred the dispute vide No. 28/4/90-LAB dated 22-3-90 for adjudication of this Tribunal under Section 7(A) of the said Act.

- "1. Whether Shri Ulhas Palekar, Quality Assurance Supervisor of M/s. M.R.F. Limited, Ponda, is a Workman under Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
2. If so, whether the action of the management of M/s. M.R.F. Limited, Ponda in terminating the services of Shri Ulhas Palekar with effect from 28-9-1989 is legal and justified?
3. If the answer to (2) above is negative, to what relief the Workman is entitled?"

2. On receipt of the said reference, it was registered as Industrial Dispute No. 10/90 and notices were issued to both parties. Party I/Workman filed his statement of claim vide Exb. 2, whereas the written statement was filed by Party II/Employer at Exb. 3. The rejoinder was filed by the Workman at Exb. 4.

3. The case put forth by the Workman in nut shell is as under.

The Workman was employed with Party II since 16-12-1974 and his initial appointment was as a clerk as per appointment letter dated 7-12-1974. Somewhere in the year 1983 the Workman was given higher pay grade of MA-1 w.e.f. 1-1-1983 and was allotted the duties as a Quality Assurance Supervisor which mainly includes supervising the line of production of tyres from quality angle right from the initial process till the final tyres are rolled out of the factory production line and thereafter record various reports as stipulated by the company called as check list. Further the Workman, after preparing check list and other reports, was to record the highlights of the day at the back side of the form/check list, relating to particular department. Thus, the duties of the Workman were of supervising the line of production for Quality Assurance and recording several dates in the check list, details of which are given in the statement of claim. He was required to fill up about 25 forms during the course of day while supervising the line of production.

4. The Workman was thereafter given upper grade MA-2 vide letter dated 21-4-1986. The Workman further stated that in the second week of April, 1988, he was on duty in the 3rd shift which begins at 12.00 midnight and on 4-4-1988 when he reported for duty at 12.00 midnight he noticed that his colleague, other Quality Assurance Supervisor was absent from duty and this as per normal duty procedure followed in the company i.e. during the absence of other duty Quality Assurance Supervisor, only Quality Assurance Supervisor on duty to attend to both the duties. Hence on 4-4-88 the Workman had to attend the duty on his own and that the duties of other Quality Assurance Supervisor who was absent. While carrying on the duties of two supervisors, he had to wait even after his shift ended at 8.00 hours and in the said process he carried out checking of cement roll after his shift was over and recorded necessary date in the requisite check as earlier. During the shift he was unable to carry out the check of cement room being locked as well as he had no time to make enquiry about the key of the

said cement room or the reasons for locking as he was very busy and occupied in attending his own duties as well as his additional duties of his colleague supervisor who was absent. Thus, after 8.00 hours when he noticed the cement room open he went in and carried out the check and filled the check list and submitted his report and then left the factory after informing authorities concerned. On 5-4-1988 when the Workman reported duty at his third shift as usual, he was stopped by security guard on duty and was refused entry in the factory. Hence, the Workman though willing to work was refused to do so. He served notice dated 7-4-88 by registered A.D. to the General Manager informing him that he was refused entry in the factory. The management though received the said letter dated 7-4-1988 attempted to create records/evidence against the Workman and illegally tried to justify refusal of entry in the factory by passing back dated suspension letter dated 5-4-1988, which was passed on 12-4-1988. Similarly, a charge sheet dated 14-4-1988 was issued and posted on 16-4-1988 by creating evidence against Workman. In the said charge sheet it was alleged that the check list submitted by the Workman relating to the cement room was filled when carried out necessary check. The Workman submitted his explanations thereby denying all allegations and called upon the management to withdraw the suspension and to drop discretionary action.

5. The Workman further submitted that by letter dated 2-5-1988 the employer informed him that his explanation was not found satisfactory and hence enquiry was ordered to be held into the charges levelled against the Workman. It was also informed that Shri N. P. Philipos, an officer of the company was appointed as enquiry officer and the date is fixed as 11-5-1988. The Workman attended the first hearing alongwith his Labour Consultant. However, the said Labour Consultant was not allowed entry in the factory premises and was stopped at the gate. The Chief Security Officer though informed about the purpose of the visit of the Labour Consultant he was not allowed to enter the factory premises. The management has therefore decided to refuse representation to the Workman at the domestic enquiry and pre-decided to consider the Workman guilty of the charges levelled against him on 5-6-1988. The Workman sent a registered A.D. letter to the enquiry officer lodging his protest against him to disallow entry of his labour consultant on 11-5-1988 and again asking permission to engage the services of such consultant. However such request was turned down. The conduct of the enquiry officer was thus

not impartial and he acted in favour of the management by rejecting of request made by Workman. The said enquiry officer failed/ /deliberately neglected to follow normal procedure while conducting the enquiry and he was favouring of suggestions of the management and in the same manner he was rejecting all the request of the Workman during the enquiry. The conduct of the enquiry officer was totally biased on all counts and against settled norms of fair play and impartial enquiry. The enquiry officer has violated the principle of natural justice, fair play and thus the entire enquiry stands vitiated including findings which are so perverse that no prudent man can accept it. After closure of the enquiry somewhere in September, 1988, the enquiry officer deliberately delayed submission of findings for a period of thirteen months and the management also failed to communicate to the Workman its decision. Finally, vide letter dated 10-6-1989 the Workman was called to meet the management at the guest house of the company on 16-6-1989 and at that time Plant Personal Manager informed the Workman the decision of the management to terminate the services of the Workman and he should not pursue legal remedy to settle the case amicably by accepting suitable compensation. Pressure was brought from all sources by the management suggesting that the Workman should resign from the company and he would be paid retrenchment compensation however he refused such offers. Vide letter dated 6-9-89 the Workman was called upon to show cause as to why his services should not be dismissed. A copy of findings of the domestic enquiry was also enclosed to the show cause notice which was promptly replied by the Workman vide his letter dated 14-9-89. Vide letter dated 26-9-89 Workman was informed that he was dismissed from the service of the company with immediate effect and was advised to collect his legal dues from Accounts Department.

6. The Workman thereafter raised an Industrial Dispute before the Conciliation Officer which resulted in failure report giving rise to the present dispute. The Workman further claimed that the charges levelled against him are false and fabricated and the enquiry was mere face and only to keep rid of the Workman from service in order to favour the other persons. He was not allowed the legal aspects during the domestic enquiry thereby violating principles of natural justice. He was illegally suspended on the basis of false and fabricated material and action of the management is malafide, unjust, illegal and bad in law. The

Workman has prayed that he should be reinstated in service with full back wages and continuity of service.

7. The employer in the written statement vide Exb. 3 raised a preliminary objection that the Party I is not a Workman as defined under Section 2(s) of the Industrial Dispute Act as he was performing essentially supervisory duties and thus the reference before this Tribunal is not maintainable.

8. As far as merits are concerned, the employer has disclosed that the company is engaged in manufacturing of tyres of national and international standards and is one of the largest exports of various tyres. The Quality Assurance Department of the employer is therefore one of the most vital department in the organisation as it safeguards and maintains the position of the company reputation in the competitive market. The said Quality Assurance Department analyses on daily basis the extent to which manufacturing process is under control and whether there is any violation of the specifications laid down or that of basic standard practices for each production. There is constant upgradation in the process of production due to the competitive market corresponding changes in the conditions and thus strict adherence to the quality parameters are essential. Any violations of quality norms are extremely harmful.

9. Further, the employer claimed that the Party I was employed as a Quality Assurance Supervisor and it was referred to the management that on 4-4-1988 while Party I was on duty in the third shift he submitted the quality assurance check list in respect of cement room. The said check list was filled by Party I indicating that he checked the cement room during the said shift and verified all the parameter mentioned therein. Further it was also reported that the cement room had been under lock and key in the second and third shift from 30-3-88 onwards. Thus, it was not possible for Party I to have made checks as given in the check list submitted by him. In view of this, the management suspended Party I pending enquiry and issued charge sheet for the charges levelled against him.

- i) Party II is engaged in the manufacture of tyres and has its factory at Usgaon, Ponda, Goa. Party II is a well known manufacturer of tyres and has both national and international standing, being also one of the largest exporter of various types of tyres.

ii) The status achieved by Party II is a result of continuous updating of technical specifications and adherence to such specifications after series of production evaluation tests. The Quality Assurance Department is therefore one of the most vital departments in the organisation. It is primarily because of the alertness of the Quality Assurance Department that the quality of the tyres is maintained and their position is safeguarded in a fiercely competitive market. The Quality Assurance Department analyses on a daily basis the extent to which the manufacturing process is under control and whether there is any violation of the specifications laid down or of the basic standard practices for each operation.

iii) Such emphasis on quality control is necessary as the tyre market is very competitive. There is a constant upgradation by the competitors of their process and their product and therefore corresponding changes and strict adherence to quality parameters are essential. Any violation of quality norms is extremely harmful. To prevent this constant feed back by way of timely and reliable reports from the Quality Assurance Department is called for.

10. The Party I was directed to submit his explanations within 48 hours and since the explanation was not found satisfactory, the enquiry officer was appointed and the enquiry commenced on 11-5-88 and concluded on 6-8-88. Enquiry was conducted in fair and proper manner and valid opportunity was given to the Party I to cross examine all the witnesses of the management and also to examine himself and his witnesses in defence. However, the Party I did not examine any witnesses in defence except himself. The Inquiry Officer submitted his report and found Party I guilty of the charges and thereafter show cause notice was issued but called upon Party I to give his say on the imposition of penalty. His explanation was found unsatisfactory and since misconduct was found grave, his services were dismissed. Remaining allegations made by Party I in the statement of claim have been specifically denied.

11. The Party I filed his rejoinder vide Exb. 4 and specifically claimed that he is covered as a Workman under Section 2(s) of the Industrial Dispute Act and found that though he was working as Quality Assurance Supervisor, his work was manual supervisory connected with machines

and/or machinery installed for production of tyres and not supervising the work of other workers. Thus, his job was to prepare the check list and therefore it was essentially of clerical nature.

12. My learned predecessor framed issues vide Exb. 5 which reads as under and therefore vide Exb. 6 re-framed issue No. 1 which reads as under.

1. Does Party II employer prove that Party I is not a Workman as defined in Section 2(s) of the Industrial Dispute Act?
2. If not, does Party I prove that the domestic enquiry held by the officers of Party II was not legal and proper and that it was against the principles of natural justice?
3. If not, whether Party I prove that the order of termination passed by Party II against him is not legal, proper and justified?
4. If yes, whether Party I is entitled to any reliefs?
5. What award or order?

13. The parties were thereafter directed that issue No. 1 would be considered as preliminary issues since it goes to the root of the matter and an opportunity was given to produce evidence on the said issue. Both parties led evidence in support of their respective stands with regard to the preliminary inquiry. On behalf of Party I, written arguments have been filed at Exb. 25 whereas learned council appearing for Party II orally argued the matter at length. I have perused the entire records as well as the citations referred during the arguments and on that basis I propose to discuss and decide issue No. 1 as under.

FINDINGS

14. *Issue No. 1:* Before considering the aspect of the burden to prove the issue framed in the present matter, it is necessary to look into the reference forwarded by Government to this Tribunal wherein the schedule earlier quoted provided at Sr. No. 1 that whether Shri Ulhas Palekar, Quality Assurance Supervisor of M/s. M.R.F. Ltd., as a Workman under Section 2(s) of the Industrial Dispute Act is basically clear to be decided and therefore, to my mind the burden to prove that Party I is coming within the category of a Workman as defined under Section 2(s) of the Industrial Dispute Act, is on Party I itself. Apart from this it is clear that both parties led evidence on the said issue and therefore considering the principles laid down under the Evidence Act, though not fully applicable to the present proceedings, the aspect of burden/onus becomes secondary when both

parties led evidence to support their contention. Thus, controversy regarding burden of proof and on whom it lies should not detain further.

15. The facts that emerges from the present reference is that there is a serious dispute as to whether the Party I is coming within the purview of the definition of Workman under Section 2(s) of the Act and thus it is necessary to look into the said provision and broad principles which have been set by various decisions of the Apex Court and the Hon'ble High Court to this respect. There is no need to quote the definition of Section 2(s) however only the portion which is material to decide the matter in hand is quoted below for ready reference.

Section 2(s) (iv)

"who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

16. It is the contention of Party II right from the beginning i.e. before the conciliation officer that Party I is not a Workman and therefore he cannot raise any Industrial Dispute. In order to appreciate this aspect it is well settled that nature of the work performed by such employee is primarily to be looked into and it depends upon the facts of each case. The question as to whether an employee is a Workman as defined under Section 2(s) of the Industrial Dispute Act, is to be determined with reference is to prove his nature of duties and functions, such question requires to be determined with reference to the facts and circumstances of the case and material placed on record. It is not possible to lay down any straight jacket formula which can be determinative or the real nature of duties and functions being performed by an employee in all cases. In any case where an employee is employed to do any type of work enumerated in the definition. There is hardly any difficulty in treating him as a Workman under the appropriate classification, in the complexity of Industrial or Commercial organization to quite a large number of employees are often required to be doing more than one work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of Workmen or goes out of it. Test is the nature of main duty of the employee and in other words, what is in substance the work which he

does or what he was in substance employed today. Whether an employees has multifarious duties and question is raised whether he is a Workman or someone other than a Workman, the court must find out what are the primary and basic duties of the person concerned. If he is incidentally asked to do some other work may not be necessarily in tune with the basic duties, this additional duties cannot change the character and the status of the person concerned. To put in other words dominant purpose of the employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the stands and the character of the person. For instance, if he is mainly doing supervisory work but incidentally or for fraction of the time also doing some clerical, manual or technical work out whatever to be held that he is employed in supervisory capacity which excludes him from the definition of the workman.

17. In *Anand Regional Co-op. Oil Seedsgrowers Union Ltd., v/s Shaileshkumar Harshadbhai Shah reported in (2006) 6 SCC 584*, the Hon'ble Supreme Court has held that supervision contemplates direction and control, while determining the nature of work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of section alone and that too it being a small one and relating to quality control would not answer the test.

18. Keeping in view all the above settled preposition laid down by the Apex Court some of which have been cited in the written submissions of the Party I as well as referred in oral argument by the learned council for Party II, evidence brought on record and the evidence of the respective parties are required to be assessed accordingly.

19. In the statement of claim filed by Party I at Exb. 2 it has been categorically stated on page 2 that in the year 1983 he received a letter from the company, elevating him in the pay grade MA-I and ever since his elevation to the grade MA-I he was allotted duties as a Quality Assurance Supervisor. He further concluded in the same para about his main duties as a Quality Assurance Supervisor which includes mainly (A) Supervising line of

production of tyres from quality angle right from the initial process till finally the tyres are rolled out of the factory production line. (B) to record various reports known as check list (C) to record the high light of the day at the back side of the check list relating to principle department. Thus, he himself stated in the claim statement that the duties allotted to him were of supervising line of production for Quality Assurance and incidently recording said data in the check list. He then contended on page 4 that he was given further upgradation as MA-II in the year 1986. Thus, these aspects have been clearly admitted by the employee in his claim statement which are basically connecting to the duties performed by him at the factory of the Party II.

20. The Party II in the written statement at Exb. 3 has described in detail the importance of the post of Quality Assurance Supervisor and the powers of such supervisor with regard to the production viz-a-viz quality control since the tyres of the company are sold in National and International market and therefore the company has to maintain strict vigil with regard to the quality control. It is also disclosed that any violation of the quality control norms is extremely harmful to the reputation of the company in the National and International market. Therefore, it was basically claimed that the work performed by Party I was purely of supervisory capacity having vast control and thus not coming within the definition of Workman as defined under Section 2(s) of the Industrial Dispute Act.

21. Since the issue was casting burden on Party II to prove that Party I is not a Workman, Party II stepped into the witness box followed by Party I. One Ratnakar Sinay Amonkar stepped into the witness box on behalf of Party II. He was cross examined at length by Party I. Thereafter, Party I himself stepped into the witness box and he has produced the appointment letter, upgradation letters and certain other documents including the forms which he was required to fill up during his employment. No other witness was examined.

22. The written submissions filed by Party I at Exb. 25 basically details with the nature of duties performed by the said party and accordingly it was contended that Party I was doing only filling up of check list and the forms which consumed most of the time of employment and therefore he was doing the clerical work predominantly. Some of the decisions of the Apex Court have been referred in the written submission even the ratio laid down in the said decisions have been already

summarized above while considering the nature of work performed by the employee and the requirements. Section 2(s) of the Industrial Dispute Act and thus there is no need to specifically deal with each citation separately. Learned counsel, Shri Sardessai arguing for Party II stress mainly on admissions of the Party I in his claim statement as well as during cross examination and stated that the said Party I even showed his ignorance about his basic duties only to claim the benefits of section within the purview of Workman. However, an adverse inference is to be drawn against the Party I for showing such ignorance and denial of some aspects. He then contended that Party I was possessing power of command, over the work of production and he could stop the production, it is found not qualitative in nature. There was no other power which can supervise the work or the order of Party I to stop production. Therefore, his control was even extending over the production department and order of Party I of stopping production was final and the same, could invite major disciplinary proceedings against the production department. He then claimed that the main predominant duty of Party I was to control Quality Assurance and to see that the production is within the norms of the quality control. While doing such supervision he was required to note down or tick mark some forms but that was incidental to the supervision and not primary duty.

23. In order to do this work, Party I was not doing any manual work and therefore he is not covered within the definition of Workman. In the case of *Vinayak Shinde v/s S. R. Shinde* 1985 1 CLR 318 the Hon'ble Bombay High Court while explaining the meaning of "Supervise" has held as follows.

The Hon'ble High Court of Bombay in case of *Union Carbide (India) Ltd., and D. Sammuel and others reported in 1998 (80) FLR 684* laid down tests to determine as to whether employee is a supervisor or a Workman. These tests are as follows:

- (a) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;
- (b) Does the employee have powers of assigning duties and distribution of work;
- (c) Can he indent material and distribute the same amongst the Workman;
- (d) Even though he has no authority to grant leave, does he have power to recommend leave;

- (e) Are there persons working under him;
- (f) Has the power to supervise the work of men and nor merely machines.
- (g) Does he mark the attendance of other employees.
- (h) Does he write the confidential reports of his subordinates.

24. Considering the various decisions laid down as to what is to be taken for consideration in order to decide the core question as to whether the employee is coming within the definition of Workman under Section 2(s) of the said Act, is the substantial work which the employees performed and not incidental as has powers to supervise other employees. With this clear concepts, a case put forth by employee in the present matter is to be assessed.

25. While disclosing the case put forth by the employee in his statement of claim at Exb. 2, he has clearly admitted that though initially he was appointed as a clerk in the year 1975, he was promoted to the post of Quality Assurance Supervisor Grade MA-I and thereafter to MA-2 with higher pay scales. He also admitted that his main duty was to supervise line of production of tyre of quality angle right from the initial process till the tyre is finally rolled out of factory production line. Thus, his duties were mainly to supervise the line of production from quality angle. This aspect has been specifically elaborated in the written statement filed by Party II while going through the details of the work of Quality Assurance Supervisor which includes even the powers of stopping the production in case it is found that there is defect in products right from the inception till tyre is finally rolled out. This aspect has been confirmed by the employee himself in his deposition vide Exb. 12. The employee has deposed on oath in his examination in chief as under "In Quality Assurance Department I was doing the work of going to all departments and checking whether the process of manufacturing was being done according to the specifications. After checking, I was making the report on the check list. In a day, I used to fill about 26 forms".

"There are three mills called as Banburry Departments and they are numbers as A, B, C. In each shift I used to visit each mill twice. The compound comprising of rubber and chemical is being kept on the conveyor belt before it is taken to the mill. I used to check the weight of the rubber and chemical and other ingredients before going to the mill. The actual weight of the rubber and chemicals was being taken by me on the weighing machine."

26. The said Workman in his deposition at page 3 had given in detail the actual work performed by him as well as the forms required to be filled by him. In the said deposition the employee has therefore confirmed that his main job was to look after the quality of the production from all the eight departments and the steps under which the production was being continued. He also admitted that each of the Quality Assurance Supervisor is to conduct random checking. At each and every checking of the production line if it is found defect to be defective then to immediately note it down and to inform the higher authorities. Similarly, he admitted that on finding defect on any such of the production, he was having authority to inform the production supervisor to immediately cure the defect and/or to hold the production. Cross examination which starts from page 12 is again very much important wherein there are clear admissions on the part of employee about the nature of work performed by him at each and every stage of production.

27. Further on page 13 the employee has admitted as follows:

"I admit that in the letter Exb. W-2. It is mentioned that I will be governed by the terms and conditions applicable to management staff in my grade from the date of my promotion. It is true that when I was promoted to further grades, other than the salary my terms and conditions remained unaltered."

"It is true that when I was continued from second shift to third shift if the Quality Assurance Supervisor remained absent in the third shift I was to be incharge of the entire plant."

"It is true that if the tyre was defective I used to put the defective material slip. The missing of the steps in the curing cycle may be due to various reason. One of the reasons may be the engineering fault. It is true that unless the machine is repaired the tyre cannot be cured again. If the machine is loaded again for curing the tyre without repairing the fault. I had the authority to hold the tyre."

After my promotion as a Supervisor I was getting more salary than what I was getting as a Clerk. I was not covered under any settlement. I was not a member of any union at any time."

28. The above aspects disclosed during cross examination of the employee clearly goes to show that predominant duties of the employee was of supervisory nature having powers even to hold the entire production process if some defect is noted. Similarly, the Quality Assurance Supervisor was

considered to be the in charge of the entire plant on same stages or in absence of higher authorities. This clearly show that the employee was not only working in a Supervisory category but was having vast powers even to control and supervise other Workmen including production supervisor.

29. The witness examined by the employer Shri Ratnakar Sinay Amonkar vide Exb. 11 has confirmed all these aspects and deposed in detail the predominant work performed by Quality Assurance Supervisor and he has even produced the documents showing that the employee has sanctioned leave and other works and has got powers to recommend the enquiry against the Workman.

30. It is further admitted fact that one Shri Vishnu Kamat who was also working as Quality Assurance Supervisor with Party II having similar powers and duties as that of Party I, filed reference before this court and the same was decided vide order dated 6-3-98 vide reference No. IT/9/90 and it was found that the said Party I was not covered under the definition of Workmen. The said Shri Vishnu Kamat, preferred writ petition before the Hon'ble Bombay High Court at Goa vide writ petition No. 167/99 wherein the Hon'ble Bombay High Court confirmed the findings of this Tribunal that Quality Assurance Supervisor is not a Workman. The duties performed by said Vishnu Kamat and that of the present Party I were similar in nature which has been admitted by Party I in his deposition. Thus, it has been clearly accepted that the duties performed by Party I are of supervisory nature and therefore he cannot be considered as a Workman as defined in Section 2(s) of the Industrial Dispute Act. In view of this I pass the following.

ORDER

1. Shri Ulhas Palekar, Quality Assistant Supervisor of M/s. M.R.F. Ltd., Ponda is not a Workman under Section 2(s) of the Industrial Disputes Act, 1947.
2. The reference No. 28/4/90-LAB dated 22-3-90 as to whether the action of the management of M/s. M.R.F. Ltd, Ponda in terminating the services of Mr. Ulhas Palekar w.e.f. 28-9-89 is legal and justified, does not survive. Since this Tribunal cannot entertain such reference as Party I is not a Workman under Section 2(s) of the Industrial Disputes Act, 1947.

3. In view of the above, the Party I is not entitled for any relief. No orders as to cost. Inform the Government accordingly.

Sd/-
(B. P. Deshpande),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 08-10-2010 in reference No. IT/10/02 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 18th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before B. P. Deshpande, Presiding Officer)

Ref. No. IT/10/02

Shri Chandrakant M. Gaonkar,
At Alulem, Kirlapal,
Dabal, Goa.

... Workman/Party I

V/s

The Managing Director,
M/s. Goa Bagayatdar
Sahakari Kharedi Vikri
Sauntha Maryadit,
Ponda, Goa.

... Employer/Party II

Party I/Workman is represented by Adv., Miss Reshma Prabhu.

Party II/Employer is represented by Adv., A. Nigalye.

AWARD

(Passed on this 8th day of October, 2010)

In exercise of the powers conferred under Section 10(1)(d) of the Industrial Dispute Act, the Government of Goa referred the following dispute No. 28/6/2001-LAB dated 14-2-2002 for adjudication of this Tribunal.

“(1) Whether the action of the management of M/s. Goa Bagayatdar Sahakari Kharedi Vikri Saunstha Maryadit, Ponda, Goa, in terminating the services of Shri Chandrakant M. Gaonkar Mapari, with effect from 12-2-99, is legal and justified?

(2) If not, to what relief the Workman is entitled?”

2. Notices were issued to Party I and Party II and accordingly claim statement was filed on behalf of Party I vide Exb. 4 and written statement was filed by Party II at Exb. 5 and thereafter rejoinder was filed at Exb. 7 by Party I. Issues were framed at Exb. 8 and re-casted vide Exb. 13. Issues No. 1 to 6 were treated as preliminary issues and both parties led evidence on the said issues. An order was passed on 13-1-2009 vide Exb. 18 by my learned predecessor holding that the enquiry conducted by Party I is fair and proper and further the charges levelled against Party I have been proved to the satisfaction of this Tribunal. Hence the matter was thereafter kept for evidence of the parties on the remaining issues that is 7, 8 and 9 vide Exb. 13 which reads as under together with my findings against it.

7. Whether action of the management of the Party II in terminating services of the Party I w.e.f. 12-2-1999 is legal and justified? Proved.

8. Whether the Party I is entitled to reliefs as prayed for? Not proved.

9. What Award? As per order below.

FINDINGS

3. *Issue Nos. 7 and 8:* Party I filed his affidavit at Exb. 19 and placed reliance on the copy of letter addressed to the chairman, the enquiry report and disciplinary proceedings held against Anand Gaonkar, letter dated 16-9-98 from Anand Gaonkar and reply dated 7-1-99. He examined one witness by name Umesh Wadikar who filed his affidavit at Exb. 21. No witness was examined on behalf of Party II. The matter was thereafter posted for arguments on the said issues. However, no one appeared on behalf of Party I and written submissions were filed by Party II at Exb. 23. In order to appreciate the facts, the background of the matter in the nutshell is necessary. Party I was employed with Party II as a Mapari (weighman) and he was served with the charge sheet with the allegations of committing theft of the cashew nuts from the society, selling it in the open market and

appropriating sale proceeds alongwith two other employees. A departmental enquiry was conducted against Party I and the enquiry officer found the charges against Party I as proved and therefore submitted his report dated 14-10-98 holding him guilty of the said charges of theft. After considering the said findings of the Inquiry Officer, services of Party I were terminated vide order dated 12-2-99 and thereafter Industrial Dispute was raised leading to the present reference.

4. While deciding issues 1 to 6 it has been observed by this Tribunal in order dated 13-1-99 that the enquiry was conducted in fair and proper manner against the Party I. It was further observed in the said order that the charges levelled against Party I are proved to the satisfaction of this Tribunal. The charge levelled against Party I that on 27-3-98 the said Party I alongwith other employees committed theft of 10 Kgs. of Cashew nuts and misappropriated sale proceeds. Another charge was that Party I remained unauthorisedly absent on 14-8-97. Thus, when the said charges are proved the satisfaction of the enquiry officer, the disciplinary authority as well as this Tribunal, the only question which now required to be addressed is whether the action of the management in terminating the services is legal and proportionate to the misconduct.

5. In the affidavit filed by Party I, he reiterated all the aspects regarding the domestic enquiry however such aspects cannot be looked into at this stage for the simple reason that the same has been already addressed and decided while dealing issues Nos. 1 to 6. Thus, the contention of Party I only in paragraph No. 15 onwards in affidavit Exb. 19 are relevant for the purpose of issues under consideration. It has been stated that as per the bye-laws of Party II only the Chairman/Board of Directors has the right to appoint and terminate the Workman. However, Party I was terminated by the acting Managing Director who has no authority to do so. It is claimed that no resolution was passed by the Board of Directors giving powers of termination to the acting Managing Director nor any power of attorney was given to him. Further, it has been claimed that Party II is not having any certified standing orders and it is registered under the Shops and Establishment Act and therefore ought to have followed the guidelines before terminating permanent employee.

6. Cross examination of the Workman review that he is not aware as to whether there are any service rules of Party II and what is the meaning of bye-laws. He also showed his ignorance as to what are the standing orders and whether the same are applicable to Party II. The witness examined by Party I by name Umesh is of no help since the contention raised in the affidavit at Exb. 21 are not at all connected or relevant with regard to the issues under consideration and thus the same cannot be considered as helpful for the contentions raised by Party I.

7. No material has been brought on record by Party I to show as to what are the service rules which govern the conditions of employment. No efforts were made to produce such record through the Party II. The appointment order of Party I is not placed on record. Written submissions filed by Party I at Exb. 22 is mostly challenging the enquiry proceedings itself which cannot be looked into as the same has been decided earlier. It is not clear as to who is the appointing authority of Party I and who is the disciplinary authority. The copies of service rules are not placed on record.

8. In the present matter the charge of theft and misappropriation of sale proceeds is levelled against Party I and the same is proved by acceptable evidence during the enquiry as well as before this Tribunal. Thus, when an employee is committing theft of the articles in his custody belonging to the employer, the faith of the employer of such employer is certainly affected and amounting to breach of faith as well as breach of trust and therefore removal of such employee from service cannot be considered as disproportionate. Loss of confidence and faith is the primary factor and the amount misappropriated is not the factor to be considered. Here the acting Managing Director has issued an order of termination and there is nothing on record to suggest that he has no authority to do so.

9. Party II has disclosed that the misconduct committed by the employee is of grave nature and the amount misappropriated cannot be taken into consideration but the faith and the trust in the said employee totally diminishes. Such employee cannot be kept in service by imposing lighter punishment as there is every possibility that he may indulge in similar activity which we affect the name of the employer. Reliance is placed in the place of *V. Ramana v/s A.P.S.R.T.C. and others (2005) 7 SCC 338* wherein the apex court has held that a conductor hold a post of trust and if he is

found guilty of misappropriating the amount while doing duty such person is guilty of breach of trust and should be imposed punishment of removal from service. In another decision of the *Regional Controller, K.S.R.T.C. v/s A.P. Mane (2005) 3 SCC 254*, the Apex Court observed that the loss of confidence as the primary factor and not the amount of money misappropriated and there is nothing wrong in losing confidence or faith in such an employee and awarding punishment of dismissal. There is no place for generosity or misplaced sympathy on the part of the judicial forum and interfering therefore in the quantum of punishment. In the case of *Depot Manager A.P.S.R.T.C. v/s B. Swami (2007) 12 SCC 40* it was held by the Apex Court that if the employee is dishonest in performance of his duties, he is guilty of serious misconducts and the gravity of the misconduct cannot be minimized by the fact that he was not earlier caught indulging in such dishonest conduct. Even one act of dishonesty amounting to breach of faith and may invite serious punishment. The above decisions are squarely applicable to the facts and circumstances of the matter in hand and therefore the amount misappropriated though meager, cannot be taken into account to show any misplaced sympathy towards the employee or his past record. Committing theft of the property of the employer and selling it in the open market and appropriating such sale proceeds is certainly serious misconduct and sufficient enough for losing faith and breach of trust reposed by the employer on such employee while allotting the duty handling such commodity on daily basis. Therefore, the punishment imposed on Party I cannot be considered as disproportionate to the gravity of the charge proved against Party I and hence issue No. 7 is answered as proved. Similarly, after considering the earlier order dated 13-1-2009 as well as the present discussion, it is clear that Party I is not entitled for any relief as prayed in the reference/claim statement and hence issue No. 8 is answered as not proved.

10. Considering the totality of the evidence produced on record and the submissions made from both sides, I pass the following

ORDER

The action of the management of M/s. Goa Bagayatdar Sahakari Kharedi Vikri Saunstha Maryadit, Ponda, Goa, in terminating the services

of Shri Chandrakant M. Gaonkar Mapari, with effect from 12-2-99, is legal and justified. Party I is therefore not entitled for any relief as claimed.

No orders as to cost. Inform the Government accordingly.

Sd/-
(B. P. Deshpande),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 20-09-2010 in reference No. IT/91/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 18th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before B. P. Deshpande, Presiding Officer)

Ref. No. IT/91/99

Shri Premanand M. Mashelkar,
H. No. 176, Deulwada,
Marcella, Ponda, Goa. ... Workman/Party I
V/s

M/s. Beverages Ventures (P) Ltd.,
Arlem, Raia,
Salcete, Goa. ... Employer/Party II
Party I/Workman is represented by Adv., Shri Suhas Naik.

Party II/Employer is represented by Adv., G. B. Kamat.

AWARD

(Passed on this 20th day of September, 2010)

In exercise of the powers conferred under Section 10(1)(d) of the Industrial Dispute Act, the Government of Goa referred the following dispute No. IRM/CON/SG/(23)/1999/3853 dated 6-8-99 for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Beverages Ventures (P) Limited, Arlem, Raia, Salcete, Goa, in terminating the services of Shri Premanand M. Mashelkar, Junior Supervisor, with effect from 29-3-1999 is legal and justified?

(2) If not, to what relief the Workman is entitled?"

2. Notices were issued to Party I and Party II and accordingly claim statement was filed on behalf of Party I vide Exb. 5 wherein it is contended by the said party as under.

The Party I disclosed that Party II is running an establishment under the name and style M/s. Beverages Ventures Pvt. Ltd., having its factory at Arlem, Raia, Goa. It is a company having Board of Directors and engaged in marketing branded products such as Pepsi, Mirinda, Slice, Laher Soda, Seven-up and other drinks to various customers and clients. The Party II had its depot at Khorlim, Mapusa and Arlem, Goa. The Party I was appointed as attendant at the above establishment w.e.f. 1-4-95 and promoted as Jr. Supervisor w.e.f. 1-12-1995. The Party I was doing the work of loading and unloading of soft drinks crates, checking and counting the soft drink crates, loading the vehicle, collecting details of all the vehicles and he was reporting to the depot in charge at Khorlim. Suddenly on 29-3-99 the Party I was refused employment without any justified reasons. Therefore, he addressed a letter dated 3-4-99 to the General Manager of Party II requesting for reinstatement. However, there was no response. The Party I approached the Deputy Labour Commissioner, Margao and notices were issued to Party II by Deputy Labour Commissioner but there was no response, hence failure report was submitted to the Government and thereafter the reference was made to this court. The Party I claimed that the provisions of Sections 25F, 25G of the Industrial Dispute Act have been violated and Party II has refused employment illegally. Hence, he claimed reinstatement with full back wages and continuity in service.

3. The written statement vide Exb. 6 was filed by Party II denying all aspects claimed by Party I and raising the defence of closure of the said establishment w.e.f. March, 1999 and issued termination notices to Party I w.e.f. 1-4-1999, notice pay, retrenchment compensation etc. Party I failed to accept the said amount and it was thereafter forwarded by money order at the address of Party I but he refused to accept the money order. It is

also claimed by Party II that all the depots were gradually closed down and finally the said company stopped all activities and therefore the closure of the said establishment is genuine and Workman was offered notice pay and compensation which he refused.

4. The rejoinder was filed by Party I vide Exb. 7 wherein he denied all the contentions and claimed that the business of the company is still going on and there are violations of the provisions of retrenchment and even the juniors than Party I are still working in the company.

5. Issues were framed vide Exb. 8 by my learned predecessor and thereafter the parties were asked to lead evidence. In the meantime, application for amendment was filed by Party II which was allowed and thereafter additional rejoinder was filed vide Exb. 11 by Party I. In view of said amendment to the written statement additional issue No. 4A was framed vide Exb. 12. The issues at Exb. 8 and additional Exb. 12 reads as under:

1. Whether the Party I proves that the Party II terminated his services w.e.f. 29-3-99 in contravention of the provisions of Sec. 25F of the Industrial Disputes Act, 1947?
2. Whether the Party I proves that termination of his services by the Party II w.e.f. 29-3-99 is illegal and unjustified?
3. Whether the Party II proves that the services of the Party I were terminated w.e.f. 1-4-99 on account of the closure of its Khorlim depot which was a separate and distinct establishment by itself?
4. Whether the Party II proves that the Party I refused to accept the order of termination as well as his legal dues offered to him?
5. Whether the Party I is entitled to any relief?
6. What Award?

Additional Issue

- 4A. Whether the Party II proves that its business and all establishments are permanently closed from 20-6-2000?

6. Party I stepped into the witness box and deposed on oath with regard to his claim in support of the reference. He has filed documents such as his appointment order and other correspondence.

7. The Party II examined one Mr. Sandeep Gaonkar, who was working with the company at the relevant time by filing his affidavit at Exb. 21.

Through his witness, the documents such as closure notice and statement of final settlement are produced on record. No other witnesses were examined. The Party II filed written arguments vide Exb. 26 whereas Mr. Suhas Naik appeared for Party I arguing the matter orally. I have perused the entire record and I would like to discuss the issue on merit as under.

FINDINGS

8. *Issue Nos. 1 to 5:* All these issues are taken for joint discussion since the same are interconnected and also to avoid repetition of arguments and submissions.

9. The Party I while deposing before this Tribunal has submitted on oath that initially he joined as an attendant at Khorlim depot. At that time the appointment letter was issued to him dated 1-4-95 which he has produced at Exb. W-1. As far as the appointment letter is concerned there is no dispute from the Party II so also designation shown therein as attendant.

10. He further deposed that he worked as attendant till December, 1995 and was promoted as Junior Supervisor vide letter dated 4-1-1996, which he has produced at Exb. W-2. A perusal of letter dated 4-1-1996 shows that the Workman was informed that the management w.e.f. 1-12-1995 revised the salary of Party I and his designation in the said letter is shown as Junior Supervisor. There is nothing mentioned in the said letter about any promotion from attendant to Junior Supervisor as claimed by Party I. It is the contention of Party II vide letter dated 4-1-1996 only the grade of Party I was changed from attendant to that of Jr. Supervisor and it does not amount to promotion.

11. Further, Party I deposed that he was working as Jr. Supervisor at Khorlim depot alongwith other Workmen. He also disclosed that there are three depots of Party II out of which one is at Mapusa, second at Margao, third at Khorlim. Other employees were working at Head Office. He further deposed that the distribution of soft drinks was done through the depots and Party II was having vehicles for supplying such soft drinks to various parties. He then claimed that the Party II is running business in another name i.e. Sell Well Food and Beverages and it had a plant at Raia, Margao from where the business is being operated. Sell Well Food and Beverages uses same machinery as well as vehicle of Party II. He then claimed that when his services were terminated, three persons junior to him were continued in

employment by Party II. He gave the name of such workers i.e. Rajendra Jadhav, Gunaji Jadhav, Yeshwant Rathe, Prakash Pednekar. He further claimed that after his termination the letter was sent to Party II dated 1-4-99 claiming reinstatement and full back wages from Party II and he produced the said letter at Exb. W-3 alongwith postal acknowledgment.

12. The Party I further deposed that he sent a letter to Deputy Labour Commissioner, Panaji and accordingly Party II was called but no one appeared for conciliation proceedings. Thereafter, failure report was submitted, which he has produced at Exb. W-6. He then claimed that Sell Well Food and Beverages distribute same kind of soft drink which were being distributed by Party II. The said Party II had not given closure notice nor paid any closure compensation to him and their Workmen and on this basis he claimed that his termination is illegal and unjustified.

13. The said Party I was cross examined during which he admitted that initially he was working at Khorlim depot and at the time of termination he was working at Arlem depot. He denied the suggestion that Party II had taken a decision to close down all three depots one by one and after closing down Khorlim depot partially his services were transferred to Arlem depot. However, in the same breath, he admitted that he was posted at Arlem depot somewhere in the second or third week of March, 1999. Party I denied the suggestion that the letter was issued to him dated 27-3-99 stating that his services were terminated w.e.f. 1-4-99 and that he refused to accept the said letter. He further denied the suggestion that along with the said letter he was tendered with all his legal dues including notice pay, retrenchment compensation in cash but he refused to accept the said letter as well as compensation. He then denied the suggestion that the said letter and the amount of compensation was sent to him by registered A.D. letter and money order respectively at his registered address but he refused to accept the money order. He again denied suggestion that the Party II closed all the three depots w.e.f. 2-8-99.

14. No other witness was examined by Party I to substantiate his claim regarding continuation of business activities of Party II and employment of his juniors. He has not produced a single document on record to prove his claim that Sell Well Food and Beverages is the same company and using the same plant and machinery and

vehicles of Party II. Except oral statement of Party I, it cannot be considered as gospel truth, since the burden is on him to prove such specific allegations as Party II has denied this aspects in the written statement.

15. The Party II failed to examine any worker who is now engaged by Party II and was junior to Party I in the category of the post which Party I was occupying at the relevant time i.e. Junior Supervisor. The Party I though claimed that some workers continued with Party II even though his services were terminated, he did not disclose the designations of such workers and whether they were working as Junior Supervisors.

16. As against this, Party II examined one Sandeep Gaonkar who was employed by Party II as depot in-charge at Khorlim depot and his services were also terminated by Party II on account of closure of business activities. At this stage, it is required to note that Party I has admitted that he was reporting to the depot in-charge and therefore said Sandeep Gaonkar who was working as depot in-charge was the superior officer and was knowing all particulars about the activities of Party II and the reasons of termination of the Workmen. This witness has deposed that the Party II has a company incorporated under the company's act and having its registered office at Arlem, Raia, Goa. He was working from 10-12-1996 till 20-6-2000 when his services were terminated on account of permanent closure of the business activities of Party II. He has produced the letter at Exb. 25 wherein he was informed that on account of permanent closure of the business and the establishment of the company w.e.f. 20-6-2000 his services are no more required. Alongwith the said Exb. 25, he has produced statement of final settlement of account by which he was paid retrenchment compensation including one month notice pay and other dues.

17. The said Sandeep Gaonkar has deposed that the Party I was working as attendant and he was re-designated as Junior Supervisor w.e.f. 1-12-1995. He further deposed that there were three depots of Party II and each depot was managed by a depot in-charge and Junior Supervisor, each depot was independent and separate establishment. During February/March, 1999, the Party II reviewed its business activities and have decided to close down all its depots in faced manner and to terminate the services of the personnel attached to the respective depots. In the course of the said scheme the Party II decided to close down the depot at Khorlim and the same was closed somewhere

during the third week of March, 99 partially and w.e.f. 1-8-99 permanently. He then deposed that when the said depot at Khorlim was closed down partially in March, 1999, Party I was posted at Arlem depot and his services were terminated w.e.f. 1-4-99. He then deposed that the termination notice was served on Party II on 27-3-99 alongwith final settlement dues in cash consisting of notice pay, retrenchment compensation and wages till 31-3-99. Upon serving the said order on Party I, he refused to accept the said order of termination as well as the cash tendered to him and upon refusal to Party I, the said amount was remitted to Party I by money order on 31-3-99. However, Party I refused to accept the money order and order of termination and the same was returned back to Party II. He then claimed that Party II has permanently closed down its business activities and all its establishments w.e.f. 20-6-2000 and terminated services of all the Workmen by paying their legal dues. He then deposed that after closing down the establishment by Party II, another dealer was appointed by the company i.e. M/s. Sell Well Beverages for marketing/distributing of soft drinks in place of Party II.

18. The witness examined by Party II was cross examined by the representative of Party I and it has been further brought on record that all the procedure was adopted before terminating the services of Party I on account of closure of the business. Nothing was brought on record to disbelieve the testimony of witness of Party II. Simple suggestions were given which have been denied by this witness. Only on the basis of suggestions, that juniors were retained, cannot be proved and therefore such aspect has not been substantially proved by Party I.

19. In the written submission, Party II has placed reliance in the case of *Workmen of Indian Leaf Tobacco Development Company Ltd., v/s the Management of Indian Leaf Tobacco Development Company Ltd., reported in AIR 1970 SC 860* wherein it has held that—

“no Industrial Tribunal, even in a reference under Sec. 10(1)(d) can interfere with the discretion exercised by a Company in the matter of closing down some of its branches or depots. Even if such closure may not amount to closure of the business of the Company, the Tribunal has no power to issue order directing a company to reopen a closed depot or a branch, if the Company, in fact closes its down and that closure is genuine and real. The closure may be treated as

stoppage of part of activity or business of the Company. Such stoppage of a part of a business is an act of management which is entirely in the discretion of company carrying on the business.”

In the case of *Indian Hume Pipe Co. v/s Workmen reported in 1968 Lab I.C. 1229* where the Hon'ble Supreme Court in para 9 has held that

“Once the Tribunal finds that the employer has closed its factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of a previous history between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.”

20. Coming back to the specific issues, the documentary evidence brought on record by Party II clearly show that the notice was served on Party I vide Exb. 22 which he refused to accept. Similarly, vide Exb. 23 the statement of final settlement of account was prepared including notice pay, compensation of other dues amounting to Rs. 22,281.86 and the said amount in cash was offered to Party I on 27-3-99 however, he refused to accept it also. Further, it has been brought on record by documentary proof that the said amount was sent to Party I by money order. He refused to accept the said money order as well as the registered envelop containing the order of termination. This aspect has been substantially proved and there is nothing on record to disbelieve such documentary evidence except bare denials on the part of the Party I hence there is substantial compliance on the provisions of Section 25F of the Industrial Dispute Act and hence termination is justified and legal.

21. It is claimed by Party I that there is violation of Section 25G of the Industrial Dispute Act whereby juniors have been retained/reemployed. However, in order to establish such charge, no material has been placed on record. Party I was working as Junior Supervisor and he has not brought anything on record to show that any other person was working as Junior Supervisor appointed subsequent him and now retained by the company. In absence of such documentary proof it is difficult to accept such contention.

22. The Party II justified their contention of closure of the business and decision cited supra by the Party II are clearly applicable to the facts of the matter in hand. Once it is found that the

establishment is closed, the Tribunal cannot go into the cause of the closure but it has to only observe that the closure is genuine and bonifide and actual. All these aspects are found present in the case of closure and hence Party II has succeeded in discharging the burden with regard to issue Nos. 3 and 4.

23. The Party I is only entitled to receive the amount towards retrenchment compensation as per Exb. 23 and nothing more.

24. The Party I can collect such amount from the office of Party II. It has to be made clear that Party I will not be entitled for any interest on the said amount since he refused to accept the said amount offered by Party II at the time of termination of service.

25. Considering the above discussions, it is clear that Party I failed to prove issue Nos. 1 and 2 and the same are answered as not proved. The Party II succeeded in proving issue Nos. 3 and 4 and hence the same are answered in affirmative. Since Party I has failed to discharge issues Nos. 1 and 2, he is not entitled for any relief except the legal dues as per Exb. 23, but without interest over it. Hence, issue No. 5 is answered accordingly.

26. The Party II has brought on record that all the establishments are permanently closed from 20-6-00 and this fact has not been denied at all. Even otherwise the testimony of the witness of Party II proves this aspect and therefore issue No. 4A stands proved and answered accordingly. In sum and substance, Party I is not entitled to any relief and therefore the reference is to be answered as follows:

ORDER

The action of the management of M/s. Beverage Ventures (P) Limited, Arlem, Raia, Salcete, Goa in terminating the services of Shri Premanand M. Mashelkar, Junior Supervisor w.e.f. 29-3-99 is legal and justified.

No orders as to cost. Inform the Government accordingly.

Sd/-

(B. P. Deshpande),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I at Panaji-Goa on 20-09-2010 in reference No. IT/20/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 18th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Shri B. P. Deshpande, Presiding Officer)

Ref. No. IT/20/99

Shri Agustinho Gomes,
H. No. 202, Madel,
Colva-Goa.

... Workman/Party I

V/s

M/s. Beverages Ventures (P) Ltd.,
Arlem, Raia,
Salcete, Goa.

... Employer/Party II

Party I/Workman is represented by Adv., Shri Suhas Naik.

Party II/Employer is represented by Adv., Shri G. B. Kamat.

AWARD

(Passed on this 20th day of September, 2010)

In exercise of the powers conferred under Section 10(1)(d) of the Industrial Disputes Act, the Government of Goa referred the following dispute No. IRM/CON/SG/(46)/98/1174 dated 26-2-99 for adjudication of this Tribunal.

“(1) Whether the action of the management of M/s. Beverages Ventures (P) Limited, Arlem, in terminating the services of Shri Agustinho Gomes, Sales Promoter, with effect from 10-9-1998, is legal and justified?

(2) If not, to what relief the workman is entitled?”

2. Notices were issued to Party I and Party II and accordingly claim statement was filed on behalf of Party I vide Exb. 3 wherein it is contended by the said party as under.

The Party I disclosed that Party II is running an establishment under the name and style M/s. Beverages Ventures Pvt. Ltd. having its factory at Arlem, Raia, Goa. It is a company having Board of Directors and engaged in marketing branded products such as Pepsi, Mirinda, Slice, Lehar Soda, 7 up and other drinks to various customers and clients. The Party II had its depot at Khorlim, Mapusa and Arlem, Goa. The Party I was appointed as trainee, Sales Promoter at the above establishment w.e.f. 1-11-95. The Party I was covered under E.S.I. and P.F. benefits by Party II and was paid trainee stipend of Rs.1500/-. He was issued an appointment letter dated 25-10-95 as a trainee Sales Promoter for a period of six months and vide letter dated 30-5-1996 he was confirmed at the post of Sales Promoter in Grade-II on basic salary of Rs. 555/- besides other facilities. Suddenly on 10-9-98 the Party I was refused employment without any justified reasons and he was not allowed to enter the depot of the company situated at Gogol, Margao. The Party I approached the Deputy Labour Commissioner, Margao and notices were issued to Party II by Deputy Labour Commissioner but there was no response, hence failure report was submitted to the Government and thereafter the reference was made to this court. The Party I claimed that the provisions of Section 25F, 25G of the Industrial Disputes Act have been violated and Party II has refused employment illegally. Hence, he claimed reinstatement with full back wages and continuity in service.

3. The written statement vide Exb. 5 was filed by Party II denying all aspects claimed by Party I and raising the defence of closure of the said establishment w.e.f. March, 1999 and issued termination notices to Party I w.e.f. 7-9-1998, notice pay, retrenchment compensation etc. Party I failed to accept the said amount and it was thereafter forwarded by money order at the address of Party I but he refused to accept the money order. It is also claimed by Party II that all the depots were gradually closed down and finally the said company stopped all activities and therefore the closure of the said establishment is genuine and workman was offered notice pay and compensation which he refused.

4. The rejoinder was filed by Party I vide Exb. 6 wherein he denied all the contentions and claimed that the business of the company is still going on and there are violations of the provisions of retrenchment and even the juniors than Party I are still working in the company.

5. Issues were framed vide Exb.7 by my learned predecessor and thereafter additional issue was framed vide Exb. 13 and then the parties were asked to lead evidence. In the meantime, application for amendment was filed by Party II which was allowed and thereafter additional rejoinder was filed vide Exb. 12 by Party I. In view of said amendment to the written statement additional issue No. 2A was framed vide Exb. 13. The issues at Exb. 7 and additional Exb. 13 reads as under:

1. Whether the Party I proves that termination of his service by the Party II w.e.f. 10-9-98 is illegal and unjustified?
2. Whether the Party I is entitled to any relief?
3. What Award?

Additional Issue

- 2A. Whether the Party II proves that it permanently closed its business and all the establishments on and from 20-6-2000?

6. The Party I stepped into the witness box and deposed on oath with regard to his claim in support of the reference. He has filed documents such as his appointment order and other correspondence.

7. The Party II examined one Mr. Sandeep Gaonkar who was working with the company at the relevant time by filing his affidavit at Exb. 21. Through his witness, the documents such as closure notice and statement of final settlement are produced on record. No other witnesses were examined. The Party II filed written arguments vide Exb. 26 whereas Mr. Suhas Naik appeared for Party I arguing the matter orally. I have perused the entire record and I would like to discuss the issue on merit as under.

FINDINGS

8. *Issue Nos. 1, 2 and 2A:* All these issues are taken for joint discussion since the same are interconnected and also to avoid repetition of arguments and submissions.

9. The Party I while deposing before this Tribunal has submitted on oath that initially he joined as a trainee Sales Promoter at Arlem depot. At that time, the appointment letter was issued to him dated 1-4-95 which he has produced the letter whereby he was confirmed in service vide Exb. W-2. As far as the appointment letter is concerned there is no dispute from the Party II so also designation shown therein as attendant.

10. He further deposed that he worked as Sales Promoter till 9th September, 1998 and when he reported for duty on 10-9-98, the Security Guard at the gate did not allow him to enter. He thereafter tried to contact the General Manager but he could not do so as the General Manager was out of station. He then tried to meet Managing Director but he was not allowed to meet the said officer and he was told that the management has taken decision to terminate services of surplus Sales Promoter and therefore his services were terminated. He then raised the dispute with the Labour Commissioner regarding his legal termination however management did not appear and hence failure report was submitted to the Government.

11. Further, Party I deposed that he was working as Sales Promoter at Arlem depot and after his termination the Party II employed new sales promoter in his place. He claimed that his termination is illegal and without any justification and therefore he should be reinstated with full back wages.

12. Party I was cross examined during which he disclosed that alongwith him, Party II terminated the services of seven Sales Promoters. However, he showed ignorance about the reason of such termination on the ground of surplus. He denied the suggestion of receipt of the letter of termination dated 7-9-98. He also denied the suggestion that when the letter was handed over to him, he refused to accept the same after reading the contents of it. He again denied the suggestion that he was offered an amount of Rs.13,155.30 in cash towards payment of legal dues. He again denied the suggestion that the termination letter and the amount was sent to him through registered A.D. letter/money order and that he refused to accept the said amount. However, he admitted that he did not report for duties on 8-9-98 and 9-9-98. He also denied the suggestion that on 20-2-00 Party II closed down its business activity completely and closed all establishments/depots and terminated the services of all employers by offering legal dues.

13. No other witness was examined by Party I to substantiate his claim regarding continuation of business activities of Party II and employment of his juniors. He has not produced a single document on record to prove his claim that Sell Well Food and Beverages is the same company and using the same plant and machinery and vehicles of Party II. Except oral statement of Party I, it cannot be considered as gospel truth,

since the burden is on him to prove such specific allegations as Party II has denied this aspect in the written statement.

14. The Party II failed to examine any worker who is now engaged by Party II and was junior to Party I in the category of the post which Party I was occupying at the relevant time Sales Promoter. The Party I though claimed that some workers continued with Party II even though his services were terminated, he did not disclose the designations of such workers and whether they were working as Sales Promoters.

15. As against this, Party II examined one Sandeep Gaonkar who was employed by Party II as depot in-charge at Khorlim depot and his services were also terminated by Party II on account of closure of business activities. At this stage, it is required to note that Party I has admitted that he was reporting to the depot in charge and therefore said Sandeep Gaonkar who was working as depot in charge was the superior officer and was knowing all particulars about the activities of Party II and the reasons of termination of the workman. This witness has deposed that the Party II has a company incorporated under the Company's Act and having its registered office at Arlem, Raia, Goa. He was working from 10-12-1996 till 20-6-2000 when his services were terminated on account of permanent closure of the business activities of Party II. He has produced the letter at Exb. 25 wherein he was informed that on account of permanent closure of the business and the establishment of the company w.e.f. 20-6-2000 his services are no more required. Alongwith the said Exb. 25, he has produced statement of final settlement of account by which he was paid retrenchment compensation including one month notice pay and other dues.

16. The said Sandeep Gaonkar has deposed that the Party I was working as trainee Sales Promoter and he was confirmed in the post of Sales Promoter w.e.f. 1-6-96 and by letter dated 1-2-98 job position of Party I was upgraded as Sales Promoter in Grade A III. During February/March 1999, the Party II reviewed its business activities and have decided to close down all its depots in phased manner and to terminate the services of the personnel attached to the respective depots. In the course of the said scheme the Party II decided to close down the depot at Khorlim and the same was closed somewhere during the third week of March, 99 partially and w.e.f. 1-8-99 permanently. He then deposed that on account of being found surplus in his category, the services of Party I were

terminated alongwith seven workmen from 10-9-98 under order of termination of services dated 7-9-98. Upon serving the said order on Party I, he refused to accept the said order of termination as well as the cash tendered to him and upon refusal to Party I, the said amount was remitted to Party I by money order on 9-9-98. However, Party I refused to accept the money order and order of termination and the same was returned back to Party II. He then claimed that Party II has permanently closed down its business activities and all its establishments w.e.f. 20-6-2000 and terminated services of all the workmen by paying their legal dues. He then deposed that after closing down the establishment by Party II, another dealer was appointed by the company i.e. M/s. Sell Well Beverages for marketing/ distributing of soft drinks in place of Party II.

17. The witness examined by Party II was cross examined by the representative of Party I and it has been further brought on record that all the procedure was adopted before terminating the services of Party I on account of closure of the business. Nothing was brought on record to disbelieve the testimony of witness of Party II. Simple suggestions were given which have been denied by this witness. Only on the basis of suggestions, that juniors were retained, cannot be proved and therefore such aspect has not been substantially proved by Party I.

18. In the written submission, Party II has placed reliance in the case of *Workmen of Indian Leaf Tobacco Development Company Ltd., V/s the Management of Indian Leaf Tobacco Development Company Ltd., reported in AIR 1970 SC 860* wherein it has held that—

“no Industrial Tribunal, even in a reference under Sec. 10(1)(d) can interfere with the discretion exercised by a Company in the matter of closing down some of its branches or depots. Even if such closure may not amount to closure of the business of the Company, the Tribunal has no power to issue order directing a company to reopen a closed depot or a branch, if the Company, in fact closes it down and that closure is genuine and real. The closure may be treated as stoppage of part of activity or business of the Company. Such stoppage of a part of a business is an act of management which is entirely in the discretion of company carrying on the business.”

In the case of Indian Hume Pipe Co. V/s Workmen reported in 1968 Lab I. C. 1229 where the Hon'ble Supreme Court in para 9 has held that

“Once the Tribunal finds that the employer has closed its factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of a previous history between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.”

19. Coming back to the specific issues, the documentary evidence brought on record by Party II clearly shows that the notice was served on Party I vide Exb. 25 colly which he refused to accept. Similarly, vide Exb. 25 colly the statement of final settlement of account was prepared including notice pay, compensation of other dues amounting to Rs. 55,639.00 and the said amount in cash was offered to Party I on 7-9-98. However, he refused to accept it also. Further, it has been brought on record by documentary proof that the said amount was sent to Party I by money order. He refused to accept the said money order as well as the registered envelope containing the order of termination. This aspect has been substantially proved and there is nothing on record to disbelieve such documentary evidence except bare denials on the part of the Party I hence there is substantial compliance on the provisions of Section 25F of the Industrial Disputes Act and hence termination is justified and legal.

20. It is claimed by Party I that there is violation of Section 25G of the Industrial Disputes Act, whereby new employees were employed. However, in order to establish such charge, no material has been placed on record. Party I was working as Sales Promoter and he has not brought anything on record to show that any other person was working as Sales Promoter appointed subsequent to him and now retained by the company. In absence of such documentary proof it is difficult to accept such contention.

21. The Party II justified their contention of closure of the business and decision cited supra by the Party II are clearly applicable to the facts of the matter in hand. Once it is found that the establishment is closed, the Tribunal cannot go into the cause of the closure but it has to only observe that the closure is genuine and bonafide and actual. All these aspects are found present in the case of closure and hence Party II has succeeded in discharging the burden with regard to Issue Nos. 3 and 4.

22. The Party I is only entitled to receive the amount towards retrenchment compensation as per Exb. 25 colly and nothing more.

23. The Party I can collect such amount from the office of Party II. It has to be made clear that Party I will not be entitled for any interest on the said amount since he refused to accept the said amount offered by Party II at the time of termination of service.

24. Considering the above discussions, it is clear that Party I failed to prove Issue Nos. 1 and 2 and the same are answered as not proved. The Party II succeeded in proving Issue No. 2A and hence the same are answered in affirmative. Since Party I has failed to discharge Issues Nos. 1 and 2, he is not entitled for any relief except the legal dues as per Exb. 25 colly, but without interest over it. Hence, Issue No. 3 is answered accordingly.

25. The Party II has brought on record that all the establishments are permanently closed from 20-6-00 and this fact has not been denied at all. Even otherwise the testimony of the witness of Party II proves this aspect and therefore Issue No. 2A stands proved and answered accordingly. In sum and substance, Party I is not entitled to any relief and therefore the reference is to be answered as follows:

ORDER

The action of the management of M/s. Beverages Ventures (P) Limited, Arlem, in terminating the services of Shri Agustinho Gomes as Sales Promoter 10-9-98 is legal and justified.

No order as to costs. Inform the Government accordingly.

Sd/-
(B. P. Deshpande)
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I at Panaji-Goa on 30-09-2010 in reference No. IT/3/10 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 20th October, 2010.

IN THE INDUSTRIAL TRIBUNAL- -CUM-LABOUR COURT AT PANAJI

(Before Shri B. P. Deshpande, Hon'ble
Presiding Officer)

Ref. No. IT/3/10

Workmen,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Tisk, Ponda-Goa ... Workmen/Party I
V/s

M/s. Narcinva Damodar Naik,
Fatorda,
Margao-Goa ... Employer/Party II
Workmen/Party I — Shri Gaonkar.
Employer/Party II — Adv. M. S. Bandodkar.

AWARD

(Passed on 30th day of September, 2010)

1. In exercise of the powers conferred under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, the Government of Goa has referred the dispute for adjudication to this Tribunal vide reference No. 28/27/2009-LAB dated 4-01-2010, which reads as under:

- “(1) Whether the action of the management of M/s. Narcinva Damodar Naik, Fatorda, Margao, Goa, as regards non-payment of an increased Variable Dearness Allowance to its workmen with effect from April, 2008, is legal and justified?
(2) If not, what relief the workmen are entitled to?”

2. Notices were issued to both parties and thereafter the Party I and the Party II filed a joint application vide Exb. 3 wherein it has been disclosed earlier that the Party I represented by Gomantak Mazdoor Sangh raised a dispute before Deputy Labour Commissioner, South Goa for non-payment of Variable Dearness Allowances (VDA) to the workmen of the Party II in its establishment. In the said dispute, the main grievance of the Party I was that the said Party II was not paying the revised VDA which the workmen were entitled from April, 2008. The conciliation before the Deputy Labour Commissioner ended in failure and thereafter a reference was made to this Tribunal.

3. The parties in the application at Exb. 3 further stated that the Party II started paying the revised VDA to its employees w.e.f. April, 2009 and

therefore the dispute which was raised earlier by the union does not survive any more. Both parties jointly prayed that a no dispute award be passed.

4. I considered the application filed by both parties to the reference and found that the demands raised by the union are now fulfilled by Party II and therefore at present there is no dispute survived between the parties. Hence, the award.

AWARD

The action of the management of M/s. Damodar Naik, Fatorda as regards non-payment of an increased Variable Dearness Allowance to it's workmen with effect from April, 2008 does not survive and the same is implemented from April, 2009.

Inform the Government accordingly.

Sd/-
(B. P. Deshpande)
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I at Panaji-Goa on 20-09-2010 in reference No. IT/16/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 20th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT-I
AT PANAJI

(Before Shri B. P. Deshpande, Presiding Officer)

Ref. No. IT/16/2000

Workmen,
Rep. by the Secretary,
Goa Trade & Commercial
Workers,
Union Velho's Building,
Panjim-Goa.

... Workmen/Party I

V/s

M/s. Beverages Ventures (P) Ltd.,
Arlem, Raia,
Salcete-Goa ... Employer/Party II

Party I/Workmen are represented by Adv. Shri Suhas Naik.

Party II/Employer is represented by Adv., G. B. Kamat.

AWARD

(Passed on this 20th day of September, 2010)

1. In exercise of the powers conferred under Section 10(1)(d) of the Industrial Disputes Act, the Government of Goa referred the following dispute No. IRM/CON/SG/(40)/1999/205 dated 12-1-2000 for adjudication of this Tribunal.

“(1) Whether the action of the management of M/s. Beverages Ventures (P) Limited, Arlem, Goa in terminating the services of the following 8 workmen, with effect from 8-7-1999 is legal and justified?

1. Shri Sunil Naik.
2. Shri Deepak Madkaikar.
3. Shri Yeshwant Naik.
4. Shri Gurudas Mulli.
5. Mrs. Sujata Sambary.
6. Ms. Geeta Naik.
7. Ms. Sarita Raikar.
8. Ms. Yasmin Sheikh.

(2) If not, what relief the workmen are entitled to?”

2. Notices were issued to Party I and Party II and accordingly claim statement was filed on behalf of Party I vide Exb. 4 wherein it is contended by the said party as under.

The Party I disclosed that Party II is running an establishment under the name and style M/s. Beverages Ventures Pvt. Ltd. having its factory at Arlem, Raia, Goa. It is a company having Board of Directors and engaged in marketing branded products such as Pepsi, Mirinda, Slice, Lehar Soda, 7 up and other drinks to various customers and clients. The Party II had its depot at Khorlim, Mapusa and Arlem, Goa. The Party I/Workmen were appointed as stated at para 2 of the claim statement giving their date of joining, designation and monthly salary, on different posts and all were working till they were served with the termination order received through posts alongwith some amount towards dues which were accepted by the workmen under protest. All the workmen were confirmed at the said respective posts on which they were working and the statutory benefits such

as Provident Fund, ESI etc. and the deductions were made from their salary. Party II recruited many new persons at its above depots and presently Junior employees are retained in the employment after terminating the services of Party I. The Party I/Workmen received notices of termination on the ground that their services became surplus. However, Junior to them are still working with the Party II and therefore there is clear violation of Sections 25F and 25G of the Industrial Disputes Act. Party I claimed that they raised Industrial Dispute through the Union before the Deputy Labour Commissioner. However, no one appeared at the time of conciliation and thus failure report was submitted to the Government.

3. The written statement vide Exb. 5 was filed by Party II denying all aspects claimed by Party I and raising the defence of closure of the said establishment w.e.f. March, 1999 and issued termination notices to Party I w.e.f. 13-7-99 vide order dated 8-7-99, notice pay, retrenchment compensation etc. Party I failed to accept the said amount and it was thereafter forwarded by money order at the address of Party I and the same was accepted by the workmen. It is also claimed by Party II that all the depots were gradually closed down and finally the said company stopped all activities and therefore the closure of the said establishment is genuine and workmen were offered notice pay and compensation which they refused.

4. The rejoinder was filed by Party I vide Exb. 6 wherein he denied all the contentions and claimed that the business of the company is still going on and there are violations of the provisions of retrenchment and even the juniors than Party I are still working in the company.

5. Issues were framed vide Exb.7 by my learned predecessor and thereafter the parties were asked to lead evidence. The issues at Exb.7 reads as under:

1. Whether the Party I/Union proves that it has the authority and locus standi to raise the dispute on behalf of the workmen?
2. Whether the Party I/Union proves that the Party II terminated the services of the workmen w.e.f. 8-7-99 without complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947?
3. Whether the Party I/Union proves that the Party II did not follow the principles of "First come last go" at the time of termination of service of the workmen?

4. Whether the Party I/Union proves that the termination of the services of the workmen by the Party II with effect from 8-7-99 is illegal and unjustified?

5. Whether the workmen are entitled to any relief?

6. What Award?

6. The Party I stepped into the witness box through one of the workmen, Geeta Naik and deposed on oath with regard to their claim in support of the reference. She has filed documents such as her appointment order and other correspondence.

7. The Party II examined one Mr. Sandeep Gaonkar who was working with the company at the relevant time by filing his affidavit at Exb. 16. Through this witness, the documents such as closure notice and statement of final settlement are produced on record. No other witnesses were examined. The Party II filed written arguments vide Exb. 27 whereas Mr. Suhas Naik appeared for Party I arguing the matter orally. I have perused the entire record and I would like to discuss the issue on merit as under.

FINDINGS

8. *Issue Nos. 1 to 5:* All these issues are taken for joint discussion since the same are interconnected and also to avoid repetition of arguments and submissions.

9. The witness by name Geeta Naik examined on behalf of Party I deposed that she was working in the administrative department as a Clerk since 10-5-96 and she has produced the copy of letter dated 20-12-96 issued to her by Party II which is at Exb. W-1. She also produced the pay slip issued to her for the month of June, 1999 which is at Exb. W-2. She further deposed that Party II is engaged in the business of marketing branded products like Pepsi, Mirinda, Slice, 7 up, Teen, Lehar Soda etc. The said Party II is having depots at Corlim, Mapusa, Arlem etc. The branded products are transported by vehicles belonging to Party II and there are ten workers working in the head office including witness No. 1 who are covered under the provisions of ESI and Provident Fund Act. There are other workers working in the depots of Party II.

10. She further deposed that a letter was received by her through post dated 8-7-99 from Party II stating that she was found surplus in her category and therefore her services stands terminated from 13-7-99. With the said letter a

statement of dues was also annexed which she had produced at Exb. W-3. She further deposed that though her services were terminated on the ground of finding surplus, persons junior to her were retained in service. She gave the names of other persons who were retained being junior to her. She then claimed that after her termination she joined Goa Trade and Commercial Workers Union and requested the union to take up the illegal termination. Similarly eight other workers who were also terminated on similar grounds joined the union and on their requests, union addressed a letter dated 16-7-99 to Party II and thereafter the matter was taken up before the Deputy Labour Commissioner for conciliation. However, Party II failed to attend the proceedings and hence a failure report was forwarded to the Government. She then claimed that the termination is illegal and she was not paid correct amount towards retrenchment compensation.

11. No other workmen stepped into the witness box nor other witnesses were examined by Party I to substantiate their claim that junior employees were retained and the business is still continued. During cross examination witness No. 1 of Party I has admitted that from 20-6-00 Party II has closed its business. She again admitted that the other employees working at the head office as well as in the depots were terminated and the depots were closed permanently. She again admitted that the letter dated 8-7-99 again with the final dues were handed over to her personally which she refused and thereafter it was sent to her by post and the amount by way of money order which she accepted. The said witness was unable to disclose as to what actual amount she ought to have received towards retrenchment compensation. She has not produced any documents to show that other persons named by her in her examination in chief were junior to her and they were still working for Party II. However, it is clearly admitted by her that since June, 2000 Party II closed down its business activities therefore the contention of Party II regarding closure of establishment is substantially proved through the Party I itself.

12. As against this, Party II examined one Sandeep Gaonkar who was employed by Party II as depot in-charge at Khorlim depot and his services were also terminated by Party II on account of closure of business activities. At this stage, it is required to note that Party I has admitted that he was reporting to the depot in charge and therefore said Sandeep Gaonkar who

was working as depot in charge was the superior officer and was knowing all particulars about the activities of Party II and the reasons of termination of the workmen. This witness has deposed that the Party II has a company incorporated under the Company's Act and having its registered office at Arlem, Raia, Goa. He was working from 10-12-1996 till 20-6-2000 when his services were terminated on account of permanent closure of the business activities of Party II. He has produced the letter at Exb.17 wherein he was informed that on account of permanent closure of the business and the establishment of the company w.e.f. 20-6-2000 his services are no more required. Along with the said Exb. 17, he has produced statement of final settlement of account by which he was paid retrenchment compensation including one month notice pay and other dues.

13. The said Sandeep Gaonkar has deposed that the workmen were working on different posts and the services of workmen namely, Sunil Naik, Deepak Malkarnekhar, Smt. Sujita Sabary and Smt. Yasmin Sheikh were terminated on account of non suitability for confirmation in their respective posts w.e.f. 13-7-99 after complying with the provisions of Industrial Disputes Act as they were appointed on probation. The remaining workmen namely, Shri Yeshwant Naik, Shri Gurudas Mulli, Smt. Geeta Naik, Smt. Sarita Raikar were terminated w.e.f. 13-7-99 as found surplus in their respective categories. The workmen who were on probation, accepted their orders of termination alongwith settlement dues tendered to them personally whereas other workmen who were found surplus refused to accept termination orders alongwith legal dues offered to them personally and therefore such orders and the amount were sent by registered A.D./money order. He then deposed that Party II permanently closed down its business activities and all its establishments from 20-6-00 after paying all legal dues to the workmen. He then deposed that Party II closed the said business activities as the entire share holdings in the company, M/s. Goa Bottling Company Ltd., which were held by Timblo Group and consequently the entire business activities were taken over by Jaipuria Group from Delhi, who decided to appoint new dealer by name M/s. Sell Well Beverages Pvt. Ltd., for marketing/distribution of the soft drinks in place of Party II and therefore the said Party II was left with no other alternative but to close down their business activities.

14. Through this witness the letters of termination of the respective workmen alongwith the statement of dues and the postal acknowledgements have been placed on record from Exb. 22 up to Exb. 25 colly. A perusal of these documents clearly show that the legal dues have been calculated and handed over to the respective workmen personally/through money order and the same have been accepted. The contention of the witness examined by the Party II that the business activity has been closed down, stands admitted by the witness of Party I.

15. The witness examined by Party II was cross examined by the representative of Party I and it has been further brought on record that all the procedure was adopted before terminating the services of Party I on account of closure of the business. Nothing was brought on record to disbelieve the testimony of witness of Party II. Simple suggestions were given which have been denied by this witness. Only on the basis of suggestions, that juniors were retained, cannot be proved and therefore such aspect has not been substantially proved by Party I.

16. In the written submission, Party II has placed reliance in the case of *Workmen of Indian Leaf Tobacco Development Company Ltd. V/s the Management of Indian Leaf Tobacco Development Company Ltd.*, reported in AIR 1970 SC 860 wherein it has held that—

“no Industrial Tribunal, even in a reference under Sec. 10(1)(d) can interfere with the discretion exercised by a Company in the matter of closing down some of its branches or depots. Even if such closure may not amount to closure of the business of the Company, the Tribunal has no power to issue order directing a company to reopen a closed depot or a branch, if the Company, in fact closes it down and that closure is genuine and real. The closure may be treated as stoppage of part of activity or business of the Company. Such stoppage of a part of a business is an act of management which is entirely in the discretion of company carrying on the business.”

In the case of *Indian Hume Pipe Co. V/s Workmen* reported in 1968 Lab I.C. 1229 where the Hon'ble Supreme Court in para 9 has held that—

“Once the Tribunal finds that the employer has closed its factory as a matter of fact, it is not concerned to go into the question as to

the motive which guided him and to come to a conclusion that because of a previous history between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.”

17. The objection was raised by Party II that the union has no locus standi to raise the dispute on behalf of the workmen and therefore it was incumbent upon Party I to show that the union has got power and authority on behalf of workmen to raise industrial dispute. In this regard witness No. 1 examined by Party I disclosed that she became the member of the union only after terminating her services by Party II. However, no office bearer of the union stepped into the witness box nor any lists of the members of the union is placed on record to show that the workmen under reference were the members of the said union at any point of time. Thus, the said union has no locus standi to raise industrial dispute on behalf of present workmen. In the result, Issue No. 1 is answered as not proved.

18. As per the discussion as above, it is clear that the documents produced by Party II clearly show that the establishment was closed permanently and three workmen who were on probation were terminated since they were not found suitable for confirmation. Their legal dues were paid and therefore no grievance could be raised with regard to such aspect. Regarding remaining workmen specific documents have been placed on record to show that the termination is legal and proper after complying with the provisions of the Industrial Disputes Act and by paying suitable compensation. Since the establishment of Party II has been permanently closed down the contention of Party I that Juniors have been kept in service has no force at all. Therefore, Issues No. 2 to 5 are answered as not proved.

ORDER

The action of the management of M/s. Beverages Ventures (P) Limited, Arlem, Goa in terminating the services of the following 8 workmen, 1. Shri Sunil Naik, 2. Shri Deepak Madkaikar, 3. Shri Yeshwant Naik, 4. Shri Gurudas Mulli, 5. Mrs. Sujata Sambary, 6. Ms. Geeta Naik, 7. Ms. Sarita Raikar, 8. Ms. Yasmin Sheikh w.e.f. 8-7-99 is legal and justified.

No order as to cost. Inform the Government accordingly.

Sd/-
(B. P. Deshpande)
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 20-10-2010 in reference No. IT/15/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 20th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before B. P. Deshpande, Presiding Officer)

Ref. No. IT/15/2000

Shri Mohandas K. Naik,
Kerwada,
Usgao, Goa.

... Workman/Party I

V/s

M/s. Beverages Ventures (P) Ltd.,
Arlem, Raia,
Salcete, Goa.

... Employer/Party II

Party I/Workman is represented by Adv. Shri Suhas Naik.

Party II/Employer is represented by Adv. G. B. Kamat.

AWARD

(Passed on this 20th day of September, 2010)

In exercise of the powers conferred under Section 10(1)(d) of the Industrial Dispute Act, the Government of Goa referred the following dispute No. IRM/CON/SG/(42)/1999/355 dated 20-1-2000 for adjudication of this Tribunal.

“(1) Whether the action of the management of M/s. Beverages Ventures (P) Limited, Arlem, in terminating the services of

Shri Mohandas K. Naik, Depot In charge, with effect from 13-7-1999 is legal and justified?

(2) If not, to what relief the Workman is entitled?”

2. Notices were issued to Party I and Party II and accordingly claim statement was filed on behalf of Party I vide Exb. 4 where it is contended by the said Party as under.

The Party I disclosed that Party II is running an establishment under the name and style M/s. Beverages Ventures Pvt. Ltd., having its factory at Arlem, Raia, Goa. It is a company having Board of Directors and engaged in marketing branded products such as Pepsi, Mirinda, Slice, Laher Soda, Seven-up and other drinks to various customers and clients. The Party II had its depot at Khorlim, Mapusa and Arlem, Goa. The Party I was appointed as Depot In-charge at the above establishment w.e.f. 30-4-99. The Party I was the seniormost worker and after him the Party I appointed some other workers and some juniors are retained in service even after the Party I was terminated from service. Suddenly on 8-7-99 the Party I was served with the letter stating that his services has been terminated due to surplus age and certain amount was sent towards the purported settlement of his account which is totally illegal. There is total non compliance of the provisions of Sec. 25F of the Act. The Party I approached the Deputy Labour Commissioner, Margao and notices were issued to Party II by Deputy Labour Commissioner but there was no response, hence failure report was submitted to the Government and thereafter the reference was made to this court. The Party I claimed that the provisions of Sections 25F, 25G of the Industrial Dispute Act have been violated and Party II has refused employment illegally. Hence, he claimed reinstatement with full back wages and continuity in service.

3. The written statement vide Exb. 6 was filed by Party II denying all aspects claimed by Party I and raising the defence of closure of the said establishment w.e.f. March, 1999 and issued termination notices to Party I w.e.f 13-7-1999, notice pay, retrenchment compensation etc. Party I failed to accept the said amount and it was thereafter forwarded by money order at the address of Party I which he accepted. It is also claimed by Party II that all the depots were gradually closed down and finally the said company stopped all activities and therefore the closure of the said establishment is genuine and Workman was offered notice pay and compensation which he refused.

4. The rejoinder was filed by Party I vide Exb. 7 wherein he denied all the contentions and claimed that the business of the company is still going on and there are violations of the provisions of retrenchment and even the juniors than Party I are still working in the company.

5. Issues were framed vide Exb. 8 by my learned predecessor and thereafter the parties were asked to lead evidence. In the meantime, application for amendment was filed by Party II which was allowed and thereafter additional rejoinder was filed vide Exb. 11 by Party I. In view of said amendment to the written statement additional issue No. 5A was framed vide Exb. 12. The issues at Exb. 8 and additional Exb. 12 reads as under:

1. Whether the Party I proves that he was employed as Depot In Charge on 30-4-96 by Universal Beverages who amalgamated with the Party II on 22-11-97 and that he was continued in employment by the Party II?
2. Whether the Party I proves that the Party II terminated his services w.e.f. 13-7-1999 in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947?
3. Whether the Party I prove that the Party II retained junior employees and has employed new Workmen after termination of his services?
4. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 13-7-99 is illegal and unjustified?
5. Whether the Party II proves that the termination of services of the Party I w.e.f. 13-7-99 was on account of impending closure of its Khorlim depot from 1-8-99?
6. Whether the Party I is entitled to any relief?
7. What Award?

Additional Issue

- 5A. Whether the Party II proves that its business and all establishments are permanently closed from 20-6-2000?

6. The Party I stepped into the witness box and deposed on oath with regard to his claim in support of the reference. He has filed documents such as his appointment order and other correspondence. He examined one witness in his support and then closed his case.

7. The Party II examined one Mr. Sandeep Gaonkar who was working with the company at the relevant time by filing his affidavit at Exb. 26.

Through his witness, the documents such as closure notice and statement of final settlement are produced on record. No other witnesses were examined. The Party II filed written arguments vide Exb. 31 whereas Mr. Suhas Naik appeared for Party I arguing the matter orally. I have perused the entire record and I would like to discuss the issue on merit as under.

FINDINGS

8. *Issue Nos. 1 to 5:* All these issues are taken for joint discussion since the same are interconnected and also to avoid repetition of arguments and submissions.

9. The Party I vide deposing on oath has stated that initially he was employed with Universal Breveries as a depot in charge on 30-04-06 and he has produced the appointment letter at Exb. W-1. According to the said appointment letter at Exb. W- 1, it is clear that Party I was appointment as a depot in charge by Universal Breveries Ltd.

10. Further, Party I deposed that he started working with Party II from 22-11-97 since Universal Breveries was amalgamated with Party II. In the written statement at Exb. 6. This aspect has been denied as therefore the letter produced by Party I at Exb. W-2 dated 27-11-97 issued by Party II assumed importance. In the said letter at Exb. W-2 it has been clearly disclosed that the services of Party I have been absorbed w.e.f. 23-11-97 as a depot in charge by Breveries Ventures (P) Ltd. If, it was a fresh appointment, the letter would not have stated about absorbing the services of Party I by Party II. Thus, the inference could be drawn from the letter itself that the services of Party I from Universal Breveries Ltd., were continued by Party II. It is true that there is no document to show that there was amalgamation of Universal Breveries with that of Party II however, such aspect could be considered as a the same is supported by the letter at Exb. W-2 thereby absorbing services of Party I. No officer from Party II stepped into the witness box to rebut this aspect and one Sandeep Gaonkar who was working as depot in charge with Party II was examined. Thus, it is clear that the services of Party I continued with Party II from the first employer and hence issue No. 1 stands proved.

11. Party I further deposed that he was working as a depot in charge at Khorlim depot and he was looking after loading and unloading of soft drinks which were to be distributed to various dealers and customers. At the end of each day he used to prepare self statement, collect the cash from the

salesman and deposit it in the Bank on the next day. The Party II were distributing the soft drinks which were manufactured in the plant of Goa Bottling at Arlem, Raia. There were about ten vehicles operating from Khorlim depot for distributing the soft drinks and all the vehicles were registered in the name of Party II. He then deposed that all the said vehicles are still operating in market and carrying the soft drinks for supplying it to the dealers. The same soft drinks are still distributed to the said vehicles through the Khorlim depot.

12. Party I has then deposed that his services were then terminated w.e.f 13-7-99 by letter dated 8-7-99 and along with the said letter he was handed over the statement of final settlement of account, which he has produced at Exb. W-3 and Exb. W-4. He then claimed that before terminating these services Party II had not displayed any notice showing the name of surplus workers according to their seniority he claimed that Junior workers are still continued with Party II and therefore he raised the dispute with the Labour Commissioner which he has produced at Exb. W-5 along with the failure report at Exb. W-7. Party I further claimed that Party II has changed its name and running the same business under the name and style of Sell Well Foods and Beverages Pvt. Ltd., using the same depot and the vehicles. During cross examination Party I has denied the contention that Party II closed down all its depots and the establishments w.e.f. 20-6-00 permanently and terminated all the workers by giving their legal dues.

13. On witness was examined by name Nitesh Sakhalkar who claimed that he was working with Party II as a driver-cum-Sales man from the year 1997. This witness claimed that he resigned the job about one and half year after termination of service of Party I however, Party II continued to carry the business of distribution of soft drinks. During cross examination suggestions were put to this witness regarding closure of all depots and establishments of Party II to which witness showed his ignorance.

14. As against this Party II examined one Sandeep Gaonkar who was employed by Party II as depot in charge at Khorlim depot and his services were also terminated by Party II on account of closure of business activities. This witness has deposed that the Party II has a company incorporated under the company's act and having its registered office at Arlem, Raia, Goa. He was working from 10-12-1996 till 20-6-2000

when his services were terminated on account of permanent closure of the business activities of Party II. He has produced the letter at Exb. 25 wherein he was informed that on account of permanent closure of the business and the establishment of the company w.e.f. 20-6-2000 his services are no more required. Along with the said Exb. 25, he has produced statement of final settlement of account by which he was paid retrenchment compensation including one month notice pay and other dues.

15. The said Sandeep Gaonkar has deposed that the Party I was working as depot in charge and he was re-designated as Junior Supervisor w.e.f. 27-11-97. He further deposed that there were three depots of Party II and each depot was managed by a depot in charge and Junior Supervisor, each depot was independent and separate establishment. During February/March, 1999, the Party II reviewed its business activities and have decided to close down all its depots in faced manner and to terminate the services of the personnel attached to the respective depots. In the course of the said scheme the Party II decided to close down the depot at Khorlim and the same was closed somewhere during the third week of March, 99 partially and w.e.f. 1-8-99 permanently. He then deposed that when the said depot at Khorlim was closed down partially in March, 1999 and therefore the services of Party I were found to be surplus and thus he was terminated w.e.f. 13-7-99 under written order of termination dated 8-7-99. He then claimed that Party II has permanently closed down its business activities and all its establishments w.e.f. 20-6-2000 and terminated services of all the Workmen by paying their legal dues. He then deposed that after closing down the establishment by Party II, another dealer was appointed by the company i.e. M/s. Sell Well Beverages for marketing/distributing of soft drinks in place of Party II.

16. The witness examined by Party II was cross examined by the representative of Party I and it has been further brought on record that all the procedure was adopted before terminating the services of Party I on account of closure of the business. Nothing was brought on record to disbelieve the testimony of witness of Party II. Simple suggestions were given which have been denied by this witness. Only on the basis of suggestions, that juniors were retained, cannot be proved and therefore such aspect has not been substantially proved by Party I.

17. In the written submission, Party II has placed reliance in the case of *Workmen of Indian Leaf Tobacco Development Company Ltd., v/s the Management of Indian Leaf Tobacco Development Company Ltd.*, reported in AIR 1970 SC 860 wherein it has held that

“no Industrial Tribunal, even in a reference under Sec. 10(1)(d) can interfere with the discretion exercised by a Company in the matter of closing down some of its branches or depots. Even if such closure may not amount to closure of the business of the Company the Tribunal has no power to issue order directing a company to reopen a closed depot or a branch, if the Company, in fact closes its down and that closure is genuine and real. The closure may be treated as stoppage of part of activity or business of the Company. Such stoppage of a part of a business is an act of management which is entirely in the discretion of company carrying on the business.”

In the case of *Indian Hume Pipe Co. v/s Workmen* reported in 1968 Lab I.C. 1229 where the Hon'ble Supreme Court in para 9 has held that

“Once the Tribunal finds that the employer has closed its factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of a previous history between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.”

18. Coming back to the specific issues, the documentary evidence brought on record by Party II clearly show that the notice was served on Party I vide Exb. 27 colly which he refused to accept. Similarly, vide Exb. 23 the statement of final settlement of account was prepared including notice pay, compensation of other dues amounting to Rs. 18,581.00 and the said amount in cash was offered to Party I on 10-7-99 however, he refused to accept it also. Further, it has been brought on record by documentary proof that the said amount was sent to Party I by money order. This aspect has been substantially proved and there is nothing on record to disbelieve such documentary evidence except bare denials on the part of the Party I hence there is substantial compliance on the provisions of Section 25F of the Industrial Dispute Act and hence termination is justified and legal.

19. It is claimed by Party I that there is violation of Section 25G of the Industrial Dispute Act whereby juniors have been retained/reemployed.

However, in order to establish such charge, no material has been placed on record. Party I was working as Junior Supervisor and he has not brought anything on record to show that any other person was working as Junior Supervisor appointed subsequent to him and now retained by the company. In absence of such documentary proof it is difficult to accept such contention.

20. The Party II justified their contention of closure of the business and decision cited supra by the Party II are clearly applicable to the facts of the matter in hand. Once it is found that the establishment is closed, the Tribunal cannot go into the cause of the closure but it has to only observe that the closure is genuine and bonafide and actual. All these aspects are found present in the case of closure and hence Party II has succeeded in discharging the burden with regard to issue Nos. 3 and 4.

21. The Party I is only entitled to receive the amount towards retrenchment compensation as per Exb. 23 and nothing more.

22. The Party I can collect such amount from the office of Party II. It has to be made clear that Party I will not be entitled for any interest on the said amount since he refused to accept the said amount offered by Party II at the time of termination of service.

25. Considering the above discussions, it is clear that Party I proved issue No. 1 and the same is answered as proved. Party I failed to prove issue Nos. 2, 3 and 4 and hence answered as not proved. The Party II succeeded in proving issue Nos. 5 and 5 A are proved and hence the same are answered in affirmative. Party I is therefore not entitled for any relief as the establishment is closed and therefore the same is answered as not proved. In sum and substance, Party I is not entitled to any relief and therefore the reference is to be answered as follows:

ORDER

The action of the management of M/s. Beverage Ventures (P) Limited, Arlem, in terminating the services of Shri Mohandas K. Naik, Depot In charge w.e.f. 13-7-99 is legal and justified.

No orders as to cost. Inform the Government accordingly.

Sd/-
(B. P. Deshpande),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2010-LAB

The following award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa on 20-09-2010 in reference No. IT/2/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Smt. Upasana Majgaonkar, Under Secretary (Labour).

Porvorim, 20th October, 2010.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before B. P. Deshpande, Presiding Officer)

Ref. No. IT/2/2000

Shri Madhu Paryekar,
Veguem,
Valpoi, Satari, Goa.
V/s

... Workman/Party I

M/s. Beverages Ventures (P) Ltd.,
Arlem, Raia,
Salcete, Goa.

... Employer/Party II

Party I/Workman is represented by Adv. Shri Suhas Naik.

Party II/Employer is represented by Adv. G. B. Kamat.

AWARD

(Passed on this 20th day of September, 2010)

In exercise of the powers conferred under Section 10(1)(d) of the Industrial Dispute Act, the Government of Goa referred the following dispute No. IRM/CON/SG/(41)/99/6 dated 29-12-1999 for adjudication of this Tribunal.

“(1) Whether the action of the management of M/s. Beverages Ventures (P) Limited, Arlem, Raia-Goa, in terminating the services of Shri Madhu Paryekar, Depot Assistant, with effect from 13-7-1999 is legal and justified?

(2) If not, to what relief the Workman is entitled?”

2. Notices were issued to Party I and Party II and accordingly claim statement was filed on

behalf of Party I vide Exb. 3 where it is contended by the said Party as under.

The Party I disclosed that Party II is running an establishment under the name and style M/s. Beverages Ventures Pvt. Ltd., having its factory at Arlem, Raia, Goa. It is a company having Board of Directors and engaged in marketing branded products such as Pepsi, Mirinda, Slice, Laher Soda, Seven-up and other drinks to various customers and clients. The Party II had its depot at Khorlim, Mapusa and Arlem, Goa. The Party I was appointed as Depot Assistant by Universal Beverages Ltd., w.e.f. 1-10-96 and then with the Party II w.e.f. 22-7-97 since the Universal Beverages Ltd., amalgamated with Beverages Ventures Limited and all workers were continued in service with Party II. The Party I was the senior worker and after him the Party I appointed some others workers and some juniors are retained in service even after the Party I was terminated from service. Suddenly on 8-7-99 the Party I was served with the letter stating that his services has been terminated due to surplus age and certain amount was sent towards the purported settlement of his account which is totally illegal. There is total non compliance of the provisions of Sec. 25F of the Act. The Party I approached the Deputy Labour Commissioner, Margao and notices were issued to Party II by Deputy Labour Commissioner but there was no response, hence failure report was submitted to the Government and thereafter the reference was made to this court. The Party I claimed that the provisions of Sections 25F, 25G of the Industrial Dispute Act have been violated and Party II has refused employment illegally. Hence, he claimed reinstatement with full back wages and continuity in service.

3. The written statement vide Exb. 5 was filed by Party II denying all aspects claimed by Party I and raising the defence of closure of the said establishment w.e.f. March, 1999 and issued termination notices to Party I w.e.f. 13-7-1999, notice pay, retrenchment compensation etc. Party I failed to accept the said amount and it was thereafter forwarded by money order at the address of Party I which he accepted. It is also claimed by Party II that all the depots were gradually closed down and finally the said company stopped all activities and therefore the closure of the said establishment is genuine and Workman was offered notice pay and compensation which he refused.

4. The rejoinder was filed by Party I vide Exb. 6 wherein he denied all the contentions and claimed

that the business of the company is still going on and there are violations of the provisions of retrenchment and even the juniors than Party I are still working in the company.

5. Issues were framed vide Exb. 7 by my learned predecessor and thereafter the parties were asked to lead evidence. In the meantime, application for amendment was filed by Party II which was allowed and thereafter additional rejoinder was filed vide Exb. 10 by Party I. In view of said amendment to the written statement additional issue No. 3A was framed vide Exb. 11. The issues at Exb. 7 and additional Exb. 11 reads as under:

1. Whether the Party I proves that the Party II did not follow the rule "first come last go" and employed new workers subsequent to termination of his service?
2. Whether the Party I proves that the Party II terminated his service in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947?
3. Whether the Party I proves that the action of the Party II in terminating his services with effect from 13-7-99 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

Additional Issue

3A. Whether the Party II proves that its business and all establishments are permanently closed from 20-6-00?

6. The Party I stepped into the witness box and deposed on oath with regard to his claim in support of the reference. He has filed documents such as his appointment order and other correspondence.

7. The Party II examined one Mr. Sandeep Gaonkar who was working with the company at the relevant time by filing his affidavit at Exb. 22. Through his witness, the documents such as closure notice and statement of final settlement are produced on record. No other witnesses were examined. The Party II filed written arguments vide Exb. 21 whereas Mr. Suhas Naik appeared for Party I arguing the matter orally. I have perused the entire record and I would like to discuss the issue on merit as under.

FINDINGS

8. *Issue Nos. 1 to 5:* All these issues are taken for joint discussion since the same are interconnected and also to avoid repetition of arguments and submissions.

9. The Party I vide deposing on oath has stated that he started working with Party II from 22-11-97 but he was not given any appointment letter by M/s. Universal Breveries Ltd., where he was working earlier. He was directly employed by Party II as Depot Assistant. The letter of appointment issued by Party II is produced at Exb. W-1. He then claimed that Party II has four depots at Ponda, Khorlim, Gogol and Mapusa whereas the head office is at Arlem. Party II used to distribute soft drinks through the vehicles to different customers. His duty as Depot Assistant was to check load and unloading of soft drinks, maintaining the stock book, writing vehicle report and sometimes help the labours loading and unloading soft drinks. He then claimed that the said vehicles of Party II are still plying on the road and distributing soft drinks which Party II used to distribute. He then claimed that he was working under one Mr. Mohandas Naik and there were other employees as Salesman working in the depot.

10. Party I further deposed that his services were terminated from 13-7-99 and he received a letter of termination along with dues through post. In the said letter of termination it was disclosed that his services become surplus and thus was terminated. The said letter along with the settlement of account is produced at Exb. W-2 colly. He claimed that no prior notice was given nor the seniority list was displayed. He filed application before Labour Commissioner raising the dispute about this termination but no one appeared on Party II for conciliation thought notice was received by them. Hence a failure report was submitted to the Government which he has produced at Exb. W-4. He further claimed that presently Party II is running the same business in the name of Sell Well Food and Beverages and some staff members who were working with him are still continuing in service by Party II. On this ground he claimed that his termination on the ground of surplus is illegal and unjustified.

11. During cross examination said Party I denied the suggestion that the services were terminated

since Party II wanted to close down the Khorlim depot from 1-8-99. He admitted that on 10-7-99 Party II has infact handed over the termination order at the head office along with legal dues which he refused to accept. He denied the suggestion that other Workman working with him in the establishment of Party II were also terminated and the establishment has been closed down. He denied the suggestion that Party II had no connection with Sell Well Food and Beverages Ltd.

12. Party I did not examine any witness in support of his contention nor produced any document to show any connection between Party II and Sell Well Food and Beverages Ltd. He did not examine any other worker who is still working with Party II and was Junior to Party I in order to prove that the termination is illegal and Party II failed to follow the settled principles of "first come last go".

13. As against this, Party II examined one Sandeep Gaonkar who was employed by Party II as depot in charge at Khorlim depot and his services were also terminated by Party II on account of closure of business activities. This witness has deposed that the Party II has a company incorporated under the company's act and having its registered office at Arlem, Raia, Goa. He was working from 10-12-1996 till 20-6-2000 when his services were terminated on account of permanent closure of the business activities of Party II. He has produced the letter at Exb. 26 wherein he was informed that on account of permanent closure of the business and the establishment of the company w.e.f. 20-6-2000 his services are no more required. Along with the said Exb. 26, he has produced statement of final settlement of account by which he was paid retrenchment compensation including one month notice pay and other dues.

14. The said Sandeep Gaonkar has deposed that the Party I was working as Depot Assistant. He further deposed that there were three depots of Party II and each depot was managed by a depot in charge and Junior Supervisor, each depot was independent and separate establishment. During February/March, 1999, the Party II reviewed its business activities and have decided to close down all its depots in faced manner and to terminate the services of the personnel attached to the

respective depots. In the course of the said scheme the Party II decided to close down the depot at Khorlim and the same was closed somewhere during the third week of March, 99 partially and w.e.f. 1-8-99 permanently. He then deposed that when the said depot at Khorlim was closed down partially in March, 1999 Party I were found to be surplus and thus he was terminated w.e.f. 13-7-99 under written order of termination dated 8-7-99. He then claimed that Party II has permanently closed down its business activities and all its establishments w.e.f. 20-6-2000 and terminated services of all the Workmen by paying their legal dues. He then deposed that after closing down the establishment by Party II, another dealer was appointed by the company i.e. M/s. Sell Well Beverages for marketing/distributing of soft drinks in place of Party II.

15. The witness examined by Party II was cross examined by the representative of Party I and it has been further brought on record that all the procedure was adopted before terminating the services of Party I on account of closure of the business. Nothing was brought on record to disbelieve the testimony of witness of Party II. Simple suggestions were given which have been denied by this witness. Only on the basis of suggestions, that juniors were retained, cannot be proved and therefore such aspect has not been substantially proved by Party I.

16. In the written submission. Party II has placed reliance in the case of *Workmen of Indian Leaf Tobacco Development Company Ltd., v/s the Management of Indian Leaf Tobacco Development Company Ltd., reported in AIR 1970 SC 860* wherein it has held that—

"no Industrial Tribunal, even in a reference under Sec. 10(1)(d) can interfere with the discretion exercised by a Company in the matter of closing down some of its branches or depots. Even if such closure may not amount to closure of the business of the Company, the Tribunal has no power to issue order directing a company to reopen a closed depot or a branch, if the Company, in fact closes its down and that closure is genuine and real. The closure may be treated as stoppage of part of activity or business of the Company. Such stoppage of a part of a business is an act of management which is entirely in the discretion company carrying on the business."

In the case of *Indian Hume Pipe Co. v/s Workmen reported in 1968 Lab I.C. 1229* where the Hon'ble Supreme Court in para 9 has held that—

“Once the Tribunal finds that the employer has closed its factory as a matter of fact, it is not concerned to go into the question, as to the motive which guided him and to come to a conclusion that because of a previous history between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.

17. Coming back to the specific issues, the documentary evidence brought on record by Party II clearly show that the notice was served on Party I vide Exb. W-2 which he refused to accept. Similarly, vide Exb. 25 colly the statement of final settlement of account was prepared including notice pay, compensation of other dues amounting to Rs. 12,642.00 and the said amount in cash was offered to Party I on 8-7-99 however, he refused to accept it also. Further, it has been brought on record by documentary proof that the said amount was sent to Party I by money order. This aspect has been substantially proved and there is nothing on record to disbelieve such documentary evidence except bare denials on the part of the Party I hence there is substantial compliance on the provisions of Section 25F of the Industrial Dispute Act and hence termination is justified and legal.

18. It is claimed by Party I that there is violation of Section 25G of the Industrial Dispute Act whereby juniors have been retained/reemployed. However, in order to establish such charge, no material has been placed on record. Party I was working as Depot Assistant and he has not brought anything on record to show that any other person was working as Depot Assistant appointed subsequent to him and now retained by the company. In absence of such documentary proof it is difficult to accept such contention.

19. The Party II justified their contention of closure of the business and decision cited supra by the Party II are clearly applicable to the facts of the matter in hand. Once it is found that the establishment is closed, the Tribunal cannot go into the cause of the closure but it has to only

observe that the closure is genuine and bonifide and actual. All these aspects are found present in the case of closure and hence Party II has succeeded in discharging the burden with regard to issue Nos. 3 and 4.

20. The Party I is only entitled to receive the amount towards retrenchment compensation as per Exb. 25 colly and nothing more.

21. The Party I can collect such amount from the office of Party II. It has to be made clear that Party I will not be entitled for any interest on the said amount since he refused to accept the said amount offered by Party II at the time of termination of service.

22. Considering the above discussions, it is clear that Party I failed to prove issue Nos. 1 to 4 and the same are answered as not proved. The Party II succeeded in proving issue No. 3A and hence the same are answered as proved. Party I is therefore not entitled for any relief as the establishment is closed and therefore the same is answered as not proved. In sum and substance, Party I is not entitled to any relief and therefore the reference is to be answered as follows:

ORDER

The action of the management of M/s. Beverage Ventures (P) Limited, Arlem. Raia. Goa, in terminating the services of Shri Madhu Paryekar. Depot Assistant w.e.f. 13-7-99 is legal and justified.

No orders as to cost. Inform the Government accordingly.

Sd/-
(B. P. Deshpande),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Department of Mines

Directorate of Mines & Geology

Order

No. 96/480/88/IIR-Mines/2334

In exercise of the powers conferred by sub-section (2) of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central

Act 67 of 1957) read with sub-rule 3 of rule 24 A of Mineral Concession Rules, 1960, the Government of Goa hereby renews the mining lease in favour of M/s. Chowgule & Co. Pvt. Ltd., (hereinafter referred to as the "lessee") for undertaking mining operations for iron ore over an area of 75.2500 Ha. of land situated in villages Sirigao & Maem of Bicholim taluka for a period of 20 years effective from 22-11-2007 to 21-11-2027 subject to the conditions hereunder to be incorporated in the lease deed:

- 1) The Lessees shall carry out at his expenses such experiments on remedial measures as directed by the Director of Mines & Geology, Government of Goa (hereinafter called the "Director") or by any other officer authorized by him and shall report the result to him.
- 2) The lessee shall allow, co-operate and provide all facilities to the experts authorized by the State Government to carry out research work or experiments on remedial measures in his leased area or dumping site.
- 3) The Lessees shall, at his own expense, undertake remedial measures, to the satisfaction of the Director of Mines & Geology to prevent damage to the agricultural or forest lands due to the flow of mining rejects or wastes or slimes resulting from his mining operations, within a reasonable time or such time as the case may be, as may be directed by the Director of Mines & Geology.
- 4) If the Director of Mines & Geology or the Officer authorized by him in his behalf is of the opinion that any active dump causes or will cause damage to the agricultural or forest land, which cannot be prevented, he may by order in writing, stop further dumping on such dump. No such order shall, however, be made, unless the Lessee is offered a reasonable opportunity of stating his case and being heard.
- 5) The Lessee shall undertake to rehabilitate the land left over after the mining operations are concluded, through soil conservation measures to the satisfaction of the State Government within such reasonable time as the State Government may, by an order in writing, specify.

- 6) In the event of the failure on the part of the Lessee to undertake the aforesaid measures within the stipulated period, the State Government, without prejudice to any other action it may take against the Lessee, may take the required steps to rehabilitate the said land and recover the expenses incurred for such work from the Lessee as arrears of land revenue.
- 7) The Lessee shall undertake necessary measures to consolidate the dumps by planting suitable species of grass, legumes or trees, etc., as may be directed by the Director of Mines & Geology, from time to time.
- 8) The Lessee shall undertake to plant elsewhere within the lease area atleast as many trees as are removed during the mining operations.
- 9) The Lessee shall not dump or allow to be dumped any rejects at any point within a distance of 100 meters from the bank of any river or nallah and 50 meters from the boundary of the leased area except with the previous written permission of the State Government.
- 10) The Lessee shall not discharge or allow it to be discharged any muddy and slimy water from the beneficiation/washing plant and shall provide settling tanks of proper design and adequate capacity for settling solids so that only decanted water may overflow.
- 11) The Lessee shall undertake the work of desilting of drains and streams outside the leased area periodically to prevent them from being choked and shall provide check dams to facilitate the settling of suspended solids.
- 12) The Lessee shall take necessary steps to ensure that the trucks carrying the ore/ /rejects from the leased area to any loading point or stockyard are neither overloaded nor allowed to be overloaded.
- 13) The Lessee shall make and pay such reasonable compensation to the owner or tenant or occupant of the land or property situated in the leased area or in the vicinity of the leased area which is damaged or

injured or disturbed as a result of mining operations or due to the flow of mining rejects, slimes or waste from the mine, as the case may be, as may be assessed by the Collector, North Goa, in accordance with the law in force on the subject and shall indemnify or keep indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.

- 14) The Lessee shall obtain surface rights or obtain consent of the owner/occupier of land before entering the land for commencement of mining operations in the area.
- 15) The Lessee shall comply with the conditions laid down in the letters No. J-11015/32/2005-IA.II (M) dated 27-12-2005 & 05-11-2007 of the Ministry of Environment and Forest, Government of India.
- 16) The Lessee shall execute within a period of 180 days from the date of communication of this order, a Deed of Lease as contemplated under rule 31 of the Mineral Concession Rules, 1960.
- 17) The stamp duty shall be payable by Lessee as may be determined by the Competent Authority.

SCHEDULE

District	Taluka	Village	Area in hectares	T. C. No.
North Goa	Bicholim	Sirigao & Maem	75.2500	05/49

By order and in the name of the Governor of Goa.

Arvind D. Loliyekar, Director of Mines & Geology/Joint Secretary (Mines) (Ex Officio).

Panaji, 20th October, 2010.

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Department of Personnel

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Order

No. 7/1/95-PER(Part)

On the recommendation of Departmental Promotion Committee as conveyed by the Goa

Public Service Commission vide its letter No. COM//II/11/36 (2)/96/233 dated 06-10-2010, the Governor of Goa is pleased to promote on regular basis, the following Superintending Engineers, Public Works Department, to the post of Chief Engineer-I and Chief Engineer-II, Public Works Department, respectively (Group 'A' Gazetted) in the Pay Band—4, Rs. 37,400-67,000 plus Grade Pay Rs. 10,000/- per month with immediate effect.

1. Shri J. N. Chimulkar — Chief Engineer-I, Public Works Department.
2. Shri A. A. Parulekar — Chief Engineer-II, Public Works Department.

The above Officers shall be on probation for a period of 2 years from the date they assume charge of the post of Chief Engineer, Public Works Department, as per Recruitment Rules.

They shall exercise option for pay fixation within a period of one month from the date of issue of this Order in terms of F.R. 22 (I) (a) (1).

Consequently, Shri J. J. Rego, Principal Engineer, Public Works Department, shall be relieved from holding additional charge of the post of Chief Engineer-II, Public Works Department.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary, (Personnel-I).

Porvorim, 19th October, 2010.

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Notification

No. 7/6/99-PER (PF.)

Read: Notification No. 7/6/99-PER (PF.) dated 01-10-2010.

Corrigendum No. 7/6/99-PER (PF.) dated 07-10-2010.

The Governor of Goa is pleased to order that allocation of work/Departments amongst the

Secretaries shall be as follows with immediate effect, until further orders:-

Sr. No.	Name & Designation	Department
1	2	3
1.	Shri S. K. Srivastava, IAS, Chief Secretary (1980)	1. Home 2. Personnel 3. ARD 4. Chief Vigilance Officer 5. Civil Aviation 6. Principal Resident Commissioner 7. Forests.
2.	Shri Narendra Kumar, IAS, Commissioner & Secretary to Governor (1988)	1. Transport 2. Information & Publicity 3. Archives+ +Archaeology+ + Gazetteer.
3.	Shri S. Kumaraswamy, IAS, Secretary (Finance) (1991)	1. Finance 2. Planning 3. Mines 4. Convention Centre 5. P. P. P. 6. G. A. D. 7. Power 8. Protocol 9. Information Technology.
4.	Shri Gonesh Koyu, IAS, CEO/Secretary (1991)	1. CEO 2. Elections 3. Fisheries 4. NRI Affairs.
5.	Shri Rajeev Verma, IAS, Secretary (Revenue) (1992)	1. Health 2. Revenue 3. Social Welfare 4. Special Secretary, Home.
6.	Shri A. K. Acharya, IAS Secretary (Education) (1994)	1. Education including Higher Education, School Education and Technical Education 2. Urban Development 3. Water Resources.

1	2	3
7.	Dr. M. Modassir, IAS, Secretary (Tourism), (1995)	1. Tourism 2. Ports 3. Sports & Youth Affairs.
8.	Shri V. K. Jha, IAS, Secretary (Panchayati Raj) (1995)	1. Panchayati Raj 2. Science & Technology 3. Factories & Boilers 4. Environment 5. Vigilance 6. Special Secretary (Personnel) 7. Special Secretary (ARD).
9.	Shri D. C. Sahoo, IAS, Secretary (Labour) (1996)	1. Labour & Employment 2. Civil Supplies & Price Control 3. Co-operation.
10.	Shri T. M. Balakrishnan, IAS, Secretary to Chief Minister (1996)	1. Secretary to Chief Minister 2. Town & Country Planning 3. Industries & Commerce (SEZ) 4. Non-Conventional Energy 5. Art & Culture 6. Official Language 7. Public Grievances. 8. Special Secretary (Forests).
11.	Shri C. P. Tripathi, IAS, Secretary (Agriculture) (1996)	1. Agriculture 2. Housing 3. Catering Management 4. Craftsmen Training.
12.	Shri Tahang Taggu, IAS, Secretary (Rural Development) (1999)	1. Rural Development 2. Provedoria 3. Legal Metrology 4. RND and Inland Water Transport 5. Printing & Stationery.

1	2	3
13. Shri V. P. Rao, IAS, Secretary (W&CD) (1999)		1. Women & Child Development 2. Museums 3. Animal Husbandry & V. S. 4. PWD.
14. Shri Pramod Kamat, Secretary (Law)		1. Law 2. Judiciary 3. Legislative Affairs.

This issues in supersession of earlier all Notifications in this regard.

By order and in the name of the Governor of Goa.

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 19th October, 2010.

Office Memorandum

No. 2/7/76-PER(Vol.III) Part

Read: O.M. No. 1/1/82-PER (Part-III) dated 20-12-2001.

The Government is pleased to decide that the panel of the following DPC already constituted vide Offic Memorandum read above, to consider financial upgradation under ACP Scheme to Group 'A' & 'B' Officers and Group 'C' employees who are eligible for Pay Scale attached to Group 'B' posts, shall continue to operate for the cases under ACPS/ /MACPS with immediate effect.

- 1) Secretary of the Administrative — Chairman.
Department
- 2) Head of Department — Member.
- 3) Joint Secretary (Personnel)/ — Member.
/Under Secretary (Personnel)

Consequently, the DPC, if any, already constituted by the respective Departments in terms of Circular No. 1/1/82-PER (Part-VI) dated 06-08-2009 shall cease to operate with immediate effect.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary, (Personnel-I).

Porvorim, 19th October, 2010.

Corrigendum

No. 6/9/2009-PER(Part I)

Read: 1. Order No. 6/4/91-PER(Part II) (a) dated 20-09-2010.

The 5th para of the Order dated 20-09-2010, read in preamble, shall be substituted as follows:

The services of Shri T. S. Sawant, Senior Scale Officer of Goa Civil Service holding the post of Director (Admn.), Directorate of Health Services are placed at the disposal of the Goa Public Service Commission, for his appointment, on deputation as Secretary, Goa Public Service Commission vice Shri Sunil P. Masurkar, transferred.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary, (Personnel-I).

Porvorim, 15th October, 2010.

Department of Revenue

Notification

No. 23/25/2009-RD

Whereas by Government Notification No. 23/25/ /2009-RD dated 26-08-2009 published on pages 603 & 604 of Series II No. 23 of the Official Gazette, dated 03-09-2009 and in two newspapers (1) "Herald" dated 02-09-2009 and (2) "Goa Doot" dated 02-09-2009, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land, specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for improvements of water supply to village Talaulim, Curca, Tiswadi Taluka.

And whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, therefore, the Government hereby declares, under Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of Section 3 of the said Act, the Dy. Collector (LA), North Goa District, Panaji-Goa to perform the functions of a Collector, for all proceedings hereinafter to be taken in respect of the said land, and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said the Dy. Collector (LA), North Goa District, Panaji-Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Tiswadi

Village: Talaulim

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Area in sq. mts.
1	2	3
108 Part	O: Church of Talaulim.	1140

Boundaries :

North: Road.

South: S. No. 108.

East : S. No. 107/2, 108.

West : Road.

Total: 1140

By order and in the name of the Governor
of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).
Porvorim, 20th October, 2010.



Department of Transport

Directorate of Transport

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Order

No. D.T. pt/Est/285-II/PF/2010/3314

Ref.: This office Order No. D.Tpt/EST/285-II/(PF)//2010 dated 30-04-2010.

Government is pleased to extend the ad hoc promotion of Shri Kishor P. Lotlikar, as Assistant Director of Transport, for further period of six months w.e.f. 01-11-2010.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director of Transport & ex officio Joint Secretary.

Panaji, 14th October, 2010.

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Published and Printed by the Director, Printing & Stationery,
Government Printing Press,
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 38.00